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FILED
JUL 26 1951
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 205

HERMAN WEINMANN,

Appellant,

vs.

J. HOWARD McGRATH, ATTORNEY GENERAL OF THE UNITED STATES, AS SUCCESSOR TO ALIEN PROPERTY CUSTODIAN, ET AL.

APPEAL FROM THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

STATEMENT AS TO JURISDICTION

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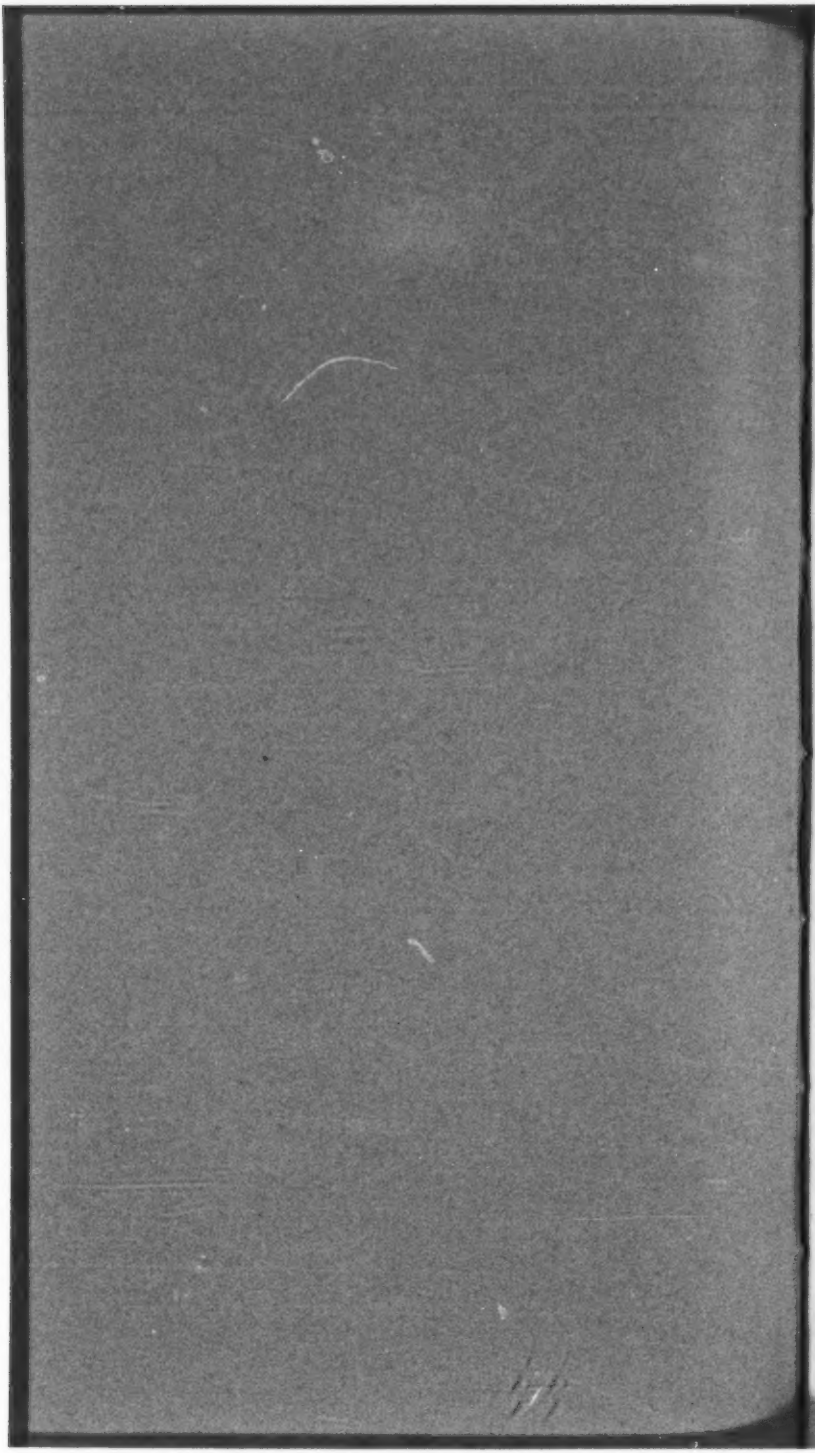

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IN THE DISTRICT COURT OF APPEAL,
SECOND APPELLATE DISTRICT,
STATE OF CALIFORNIA
DIVISION ONE

2nd Civil 17913

IN THE MATTER OF THE ESTATE OF CHRISTIAN F. REIHS,
Deceased

HERMAN WEINMANN,
Petitioner and Appellant,
vs.

J. HOWARD McGRATH, ATTORNEY GENERAL OF THE UNITED STATES, AS SUCCESSOR TO ALIEN PROPERTY CUSTODIAN,
Objector and Respondent;

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, A CORPORATION,
Executor

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, Petitioner-Appellant submits herewith his statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on

appeal to review the judgment of the District Court of Appeal, Second Appellate District, State of California, Division One, entered in this case.

Opinion Below

The opinion in the District Court of Appeal is reported in 102 California Appellate Reports (2nd), p. — (Advance Report Citation: 102 Advance Cal. Appellate Reports, p. 284). A copy of the opinion of the District Appellate Court, findings of fact, conclusions of law and decree are attached hereto as Appendix A.

Jurisdiction

The judgment of the District Court of Appeal, State of California, Second Appellate District Division One, was entered on February 13, 1951, and became final April 12, 1951. A petition for appeal to the Supreme Court is presented to the said District Court of Appeal herewith, to wit on 21st day of June, 1951. The jurisdiction of the Supreme Court to review the decision by direct appeal is conferred by Title 28, United States Code, Sect. 1257(2).

The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Southwestern Bell Tel. Co.* v. *Oklahoma,* 303 U. S. 206, and cases cited at p. 213; *Ward* v. *Love,* 253 U. S. 17, 22; *Dahnke-Walker Milling Co.* v. *Bondurant,* 257 U. S. 282, 289; *United States* v. *Pink,* 315 U. S. 203, 238.

Questions Presented

Where the President of the United States in the exercise of American war power against Germany, has entered into agreements with our Allies of World War II, for the international control and civil government of the occupied German territory, after the surrender:

A. That the extraterritorial rights and all extraterritorial matters affecting the inhabitants of the occupied territory shall be controlled by the Allied Representatives, as they may deem necessary; and that the decision of the Allied Representatives shall be final, and shall override all former German law inconsistent therewith; and,

B. That any treaty or international agreement to which Germany is or was a party—necessarily including the treaty of 1923 between the United States and Germany—granting reciprocal rights of inheritance to the nationals of each—was suspended and its revival made dependent upon the decision of the Allied governments;

may the State of California, thereafter, and during the existence of these agreements:

A. By statutory enactment, grant, and constitutionally guarantee legal rights to property in California to enemy aliens who are subject to Military Government for Germany, and the Allied Representatives.

B. By judicial processes submit the said international agreements to trial procedures, and determine as a legal fact, that these agreements did not impair the extraterritorial right of alien enemies in occupied Germany to take property in California; and

C. Judicially determine that reciprocally, the statutory rights of inheritance under German laws and constitution, remained in force and effect unimpaired by presidential international agreements; contrary to the plain and unequivocal terms of the agreements.

D. Judicially determine that under California inheritance statutes there passed to and vested in alien enemies resident in occupied Germany, under Military Government for Germany, a constitutionally guaranteed right to inherit property in California.

All points raised in the assignments of error are also presented. The questions presented, stated above, set forth the major issue.

State Statute Involved

The state statute involved and applicable to the issues of this case, as of November, 1946, the date of death of testator, is Chapter 1160, page 2208 of the California Statutes of 1945 (Cal. Probate Code Sect. 259). A copy appears as Appendix C hereto. The pertinent provisions state:

> "The right of aliens not residing within the United States or its territories to take personal property in this state by succession or testamentary disposition, upon the same terms and conditions as residents and citizens of the United States is dependent in each case upon the existence of a reciprocal right upon the part of citizens of the United States to take personal property upon the same terms and conditions as residents and citizens of the respective countries of which such aliens are resident. It shall be presumed that such reciprocal rights exist and this presumption shall be conclusive unless prior to the hearing on any petition for distribution of all or a portion of such property to an alien heir, devisee or legatee not residing within the United States or its territories, a petition is filed by any person interested in the estate requesting the court to find that either one or both of such reciprocal rights does not or do not exist as to the country of which such alien heir, devisee or legatee is resident . . ."

Statement of the Case

Christian F. Reihs, a citizen and resident of California died in November, 1946, leaving an estate consisting of personal property in California. He made substantial bequests to persons and institutions in the United States which are not involved in the issues here. By the terms of his will he bequeathed approximately One Hundred Thirty Thousand Dollars ($130,000) to institutions and relatives in the American Zone of Occupied Germany. The appellant Weinmann, an American citizen and resident of the State of New Jersey, is the next of kin of decedent entitled to suc-

ceed, under the California laws of succession, to that portion of the estate of decedent which becomes intestate by reason of the failure of the bequests made to the enemy aliens in this case. The United States Alien Property Custodian filed a vesting order claiming whatever interests the nonresident alien enemies (except the alien charitable institutions) may have in these bequests. Upon hearing of Weinmann's petition for determination of interest of persons entitled to the estate, the Superior Court of Los Angeles, California, entered its judgment that Sect. 259 of the California Probate Code (Ch. 1160, Laws of 1945), granted reciprocal rights to these enemy aliens, and that there passed to and vested in them at the date of death of decedent the respective amounts of money specifically bequeathed. The trial court judicially determined, as a fact, that the former German statutory laws of inheritance remained in full force and effect and unimpaired by the international agreements made by the President in the conduct of the war against Germany; and that the reciprocal requirements of the California law existed in Germany under Military Government, after the surrender. The appeal is from the judgment of the District Court of Appeal affirming the judgment of the lower court, on the grounds that the evidence sustained the findings and conclusions of the trial court; and that no error existed under the constitutional or international principles raised by Appellant.

Constitutional Provisions Involved

Article II, Section 1, Clause 1: Vesting executive power in the President; Article II, Section 2, Clause 1: Making the President Commander in Chief of the Armed Forces; Article VI, Clause 2: Making the Federal Constitution, and international agreements made by the President, under his constitutional authority, the supreme law, and obligatory

upon every judge. The applicable provisions of the United States Constitution are set forth in Appendix B, hereto.

International Agreements

Declaration Regarding the Defeat of Germany, known as the Declaration of Berlin, effective date, June, 1945: Tripartite Conference of Berlin, sometimes known as the Potsdam Agreement, effective date, 2nd August, 1945; Agreement Between Allied Governments on Certain Additional Requirements Imposed on Germany, known as Allied Representatives Proclamation 2, effective 20 September, 1945. Applicable provisions of these international agreements are set forth and cited in Appendix B hereto.

Federal Question Raised

The federal questions were raised by the Petitioner-Appellant at the following stages of the proceedings below:

The Petitioner introduced into evidence the above-cited international agreements, at the hearing by the trial court of Appellant's Petitioner to determine interests in the estate. Petitioner made these agreements the basis for objections to introduction by Respondent-Appellee of unofficial, private evidence in the case contrary to these agreements. Objections were overruled. (Ex. "G," R. Tr. p. 93; Ex. "F," R. Tr. p. 75; Ex. "H," R. Tr. p. 89.)

Petitioner-Appellant made the international agreements and federal constitutional provisions, above cited, the basis of motion for new trial and to vacate judgment of the trial court (Tr. p. 29, l. 18-25; p. 30, l. 14-22). Motions for new trial and to vacate judgment were denied by the trial court (Tr. p. 42).

The federal questions were made part of the record on appeal and were presented in written briefs and oral argument to the District Court of Appeal of California. The

District Appellate Court affirmed the judgment, and order denying motions for new trial and to vacate judgment, as appears in transcript of the record filed herewith. Judgment of District Court of Appeal became final April 12, 1951 under Section 4(c) Article VI California Constitution, sixty days after entry of decision of Appellate Court, February 12, 1951 (Tr. p. 58, 93).

There has been entered and made part of the record on appeal, the certificate of the Presiding Justice, District Court of Appeal, certifying existence of federal questions; and that the judgment appealed is that of the highest state court in which a decision of this case could be had (Tr. p. 94).

Substantial Question

This case is seemingly one of first instance and the decision of the State Court is in probable conflict with applicable decisions of legal principles governing federal powers and executive authority in international affairs and foreign wars. The application of these principles to the statutory laws of California, and to the appealed decision, is sought by appeal to the Supreme Court.

The impact of principles of national sovereignty upon the issues of this case was avoided by the State Court assuming to exercise a discretion it did not have. Despite evidence of international agreements made by the President in the current war against Germany, the Court assumed the authority to take evidence of the effect of the agreements upon former German statutory law. The evidence consisted of the German statutes themselves; and, the testimony of private persons that in their opinion the German law remained in full force and effect, unimpaired by the presidential agreements, in evidence.

The international agreements speak for themselves in plain, clear and unequivocal terms, as they affect the extra-

territorial rights of the inhabitants of occupied Germany, in November, 1946. "They fall as clearly in the realm of political decisions as all other aspects of military alliances in futherance of the common objectives of victory." (Opinion, Justice Douglas, *Hiroto* v. *MacArthur*, 338 U. S. 197, 208.) This opinion specifically mentions the Potsdam Agreement, which Appellant introduced in evidence in the instant case. Portions applicable to Germany, and the issues here, are set forth in Appendix B, pp. 35-40.

> "When the President moves to make arrangements with other nations—he acts in a political role on a military matter. His discretion cannot be reviewed by the judiciary." (*Hiroto* v. *MacArthur, supra*, p. 209.)

This appeal is taken from the attempt of the California Court to define and limit these international agreements so as to exclude from their application domestic statutory rights of inheritance at issue. Such judicial attempts are contrary to applicable provisions of the federal Constitution, and the sovereign powers existing in the executive branch of the federal government. (*United States* v. *Curtiss-Wright Export Corp.*, 299 U. S. 304, 318-322.)

As construed and applied to the issues in this case, Chapter 1160, California Laws of 1945, is repugnant to the federal Constitution, Article II, Section 1, Clause 1, vesting executive power in the President and the exclusive authority to negotiate with our Allies of World War II an agreement to control the extraterritorial legal rights of the inhabitants of occupied Germany, after the surrender. (Agreement Between Allied Governments on Certain Additional Requirements Imposed on Germany, Append. B, p. 39 (12) (48). (*United States* v. *Curtiss-Wright Export Corp.*, 299 U. S. 304, 318-321; *United States* v. *Belmont*, 301 U. S. 324, 331-332; *United States* v. *Pink*, 315 U. S. 203, 233, 242.)

As construed and applied to the issues in this case the cited California law is repugnant to Article II, Section 2, Clause 1 of the federal Constitution, which makes the President Commander in Chief of the Armed Forces and gives him exclusive authority to exercise the war power against Germany.

The establishment of a civil government in conquered occupied territory after cessation of hostilities and before a treaty of peace is an exercise of war power. (*Cross* v. *Harrison*, 16 How. 164, 189, 14 L. Ed. 889); and the agreements made by the President with our Allies of World War II for the establishment of an international government for occupied Germany, after the surrender was "in furtherance of the common objectives of victory." (*Hiroto* v. *MacArthur, et al.*, 338 U. S. 197, 208).

INTERNATIONAL AGREEMENTS

By these agreements the President declared that after the surrender there existed no central German government or authority (Declaration of Berlin, Append. B., p. 35).

It was further agreed, in effect, that the Treaty of 1923 between the United States and Germany was abrogated as of the date of surrender. (Agreement Imposing Additional Requirements on Germany. Append. B., p. 38, III (6)). This treaty had established reciprocal rights of inheritance between the nationals of the United States and Germany.

In reference to these matters the decision appealed found the testimony of witnesses amply sustained the holding that reciprocity of inheritance existed between the nationals of the two countries, after the surrender. (Append. A, p. 21.) And the decision further found that the former German statutes remained in full force and effect, unimpaired by the agreement that the German government

was dissolved and the Allied Representatives assumed supreme authority. (Append. A, pp. 26 (XI), 27(II).)

As construed and applied to the facts and issues of this case, Chapter 1160, California Laws of 1945 is repugnant to Article VI, Clause 2, of the federal Constitution, which makes international agreements executed by the President, under his constitutional authority, the supreme law. The decision appealed does violence to the provisions of this same Article and Clause, which makes the constitution and such international agreements obligatory upon every judge. As to both propositions this Article of the Constitution is mandatory and self-executing.

The errors in the decision appealed seem to rest in the attempt of the Court to determine statutory private rights of inheritance within the legal concepts of domestic legislation and statutory terms. Such terms, in their narrow meaning are inapplicable and unacceptable to determination of issues inextricably involved in dealings of the United States in foreign affairs.

In the decision appealed the Court holds that there "passed to and vested in" the alien enemies in this case specific sums of money in California (Append A, pp. 31, 32). But the system of law and the form of international government to which these aliens were subject, including their extraterritorial legal rights does not express the concept of private vested legal rights. The point was argued and not challenged in the instant case. Such is the opinion of the Attorney General of the United States given in another case involving the same section of the California law. This opinion states:

> "Although retroactive laws are repugnant to the Constitution of the United States, it must be remembered that the issue in this case relates, not to Ameri-

> can law, but to German laws. In its supreme sovereign capacity the occupying authorities in Germany, through its Allied Control Council, is unrestricted in the laws it may enact. Retroactive laws in Germany today are valid.
>
> "It is equally idle to speak of vested rights in connection with rights of inheritance as they existed in Germany on any date during the war." (Opinion filed in the Estate of Marie V. Peters, Los Angeles County, Case No. 233,316, Vesting Order, September, 1946.)

The American concept of private vested rights in property is not necessarily expressed in any principle of international law; nor is it recognized by some civilized nations (*United States* v. *Allstoetter, et al.*, United States Military Tribunal III, Nuremberg, Germany, December 4, 1947, and authorities cited at pp. 10614-23, 10636-37).

Under such circumstances it is idle to speak of legal rights of the inhabitants of occupied Germany, during domestic occupation, as a "vested" right to property in California; or "reciprocal" to the domestic statutory right guaranteed by the Constitution of the State of California. The legal concept under the California law is too narrow and inadequate to encompass the broader concepts of private rights under the law of nations and the international agreements entered into by the President of the United States to accomplish the objects and purposes of the war against Germany. Irrespective of these legal distinctions it should be apparent that the opinions or conclusions of the judiciary of forty-eight state jurisdictions may not under our system of government, attach their respective and varied judgments as to what legal rights the President in the exercise of his constitutional powers, intended or conceived the inhabitants of Germany to have, extraterritorially.

It seems evident, if embarrassment, perhaps serious inferences of lack of American unity in decisions of important

state jurisdictions, are to be avoided, the distinctions necessary to proper exercise of federal executive powers in time of foreign war, and, legislative and judicial authority of the State of California in domestic matters, be recognized in this case.

No state can require the federal foreign policy to conform to its own domestic policies. (*United States* v. *Pink*, 315 U. S. 203, 233; *United States* v. *Belmont*, 301 U. S. 324, 331-332.)

In all negotiations and dealings of the United States with foreign nations, essentially in time of foreign war, the United States speaks with one voice and acts as one—state lines disappear. As to such purposes, the State of California (New York) does not exist. (Id.)

The final decision in this case will establish or deny that the Courts of California have the power to review exercise of military powers abroad and the President's conduct of external affairs in our government. (See Memorandum Opinion Justice Jackson, Oct. Term, 1948, 335 U. S. 876).

It is respectfully submitted, there is a violation of the above-cited constitutional provisions and principles of national sovereignty in the construction and application of the California law involved in this case and in the decision and judgment of the Court entered herein. It is respectfully submitted that the questions presented on appeal are substantial and of grave public importance.

GEORGE T. GOGGIN,
Counsel for Petitioner-Appellant,

PIERCE LONERGAN,
Of Counsel.

APPENDIX "A"

OPINION OF THE DISTRICT COURT OF APPEAL

Advance Report Citation, 102 A. C. A. 284. 102 Cal. App. Reports, (2nd) p. —.

(Civ. No. 17913. Second Dist., Div. One. Feb. 13, 1951.)

Estate of Christian F. Reihs, Deceased, Hermann Weinmann, Appellant, v. Attorney General, as Successor to the Alien Property Custodian of the United States, Respondent.

Appeal from a judgment of the Superior Court of Los Angeles County and from an order denying a new trial. John Gee Clark, Judge. Judgment affirmed; appeal from order dismissed.

Proceeding for determination of interest in a decedent's estate. Judgment for defendant affirmed.

George T. Goggin and Pierce Lonergan for Appellant.

Harold I. Baynton, Assistant United States Attorney General, Director, Office of Alien Property; Ernest E. Tolin, United States Attorney, Valentine C. Hammack, Special Assistant to United States Attorney General, George B. Searls and Joseph Laufer, Attorneys, Department of Justice, Washington, D. C., for Respondent.

DRAPEAU, *J.*:

Christian F. Reihs, a citizen of the United States and a resident of Los Angeles County, died testate on November 24, 1946. His will was admitted to probate and respondent bank qualified as executor.

The will made certain bequests to residents of the United States, as well as to certain charitable institutions. Among them was a legacy of $1,000 to petitioner, Hermann Weinmann, a half-cousin of testator and his nearest of kin in the United States.

In addition to several bequests to charitable institutions in Germany, the testator left $5,000 to Mrs. Elsa Reiss Strobel. The entire residue which consisted of personal

property, he gave in equal shares to his two nephews, Carl and Gustav Reiss. The three named persons survived testator, and all reside in the city of Schorndorf, Wuerttemberg, Germany, which has been included within the American Zone of Occupation since the collapse of Germany in 1945.

By his vesting order of October 9, 1947, the Attorney General of the United States as successor to the Alien Property Custodian has taken these interests in the estate. He also appears herein for the German charitable institutions whose interests he has refrained from vesting.

The instant petition for determination of interest in decedent's estate which was filed September 30, 1948, alleges in substance that on November 24, 1946, when the testator died, American citizens had no right to take property or receive payment from German estates. Therefore, that the German charitable institutions and the three German legatees, above mentioned, are ineligible to take under Section 259 of the Probate Code.

That section conditions the right of a nonresident alien to inherit upon the existence of a reciprocal right on the part of American citizens to inherit in the country of which the alien is a national.

Accordingly, petitioner as the testator's next of kin, claims all the property bequeathed to the German legatees. The attorney general, denying the asserted absence of reciprocal inheritance rights for American citizens in Germany and relying on his vesting order, seeks distribution to himself of the legacies to the three German citizens.

Among others, the trial court found that under the German laws of inheritance in effect at the time of testator's death, "and still in force, title to an estate accruing in Germany passes by force of law as of the time of decedent's death to the person or persons designated by will or by the law of succession, regardless of nationality, domicile, or residence of said distributee or distributees.

> "XI. That under the laws, proclamations and regulations issued and promulgated by the Allied Control Council for Germany and the Military Government for Germany, United States Zone, or otherwise, the Ger-

man laws of inheritance, under which title to an estate accruing in Germany passes by force of law as of the time of decedent's death to the person or persons designated by will or by the law of succession, regardless of nationality, domicile or residence of such distributee or distributees, have remained in full force and effect.

"XII. That under the German laws of inheritance existing as of the date of the decedent, to wit: November 24, 1946, the right to receive an inheritance followed the right to inherit the same."

As a conclusion of law from the facts found, the court held that petitioner had "failed to sustain the burden of establishing that the laws of Germany do not grant reciprocal rights to inherit upon the same terms and conditions as residents and citizens of Germany." Accordingly, it was adjudged that the German charitable institutions and the attorney general, as successor in interest to the three German nationals named as legatees, were entitled to distribution of the bequests made to them under the will.

Petitioner appeals from the final decree thereafter entered.

On November 24, 1946, the date of death of testator, section 259, *supra,* read as follows:

"The right of aliens not residing within the United States or its territories to take real property in this State by succession or testamentary disposition, upon the same terms and conditions as residents and citizens of the United States is dependent in each case upon the existence of a reciprocal right upon the part of citizens of the United States to take real property upon the same terms and conditions as residents and citizens of the respective countries of which such aliens are residents and the right of aliens not residing in the United States or its territories to take personal property in this State by succession or testamentary disposition, upon the same terms and conditions as residents and citizens of the United States is dependent in each case upon the existence of a reciprocal right

upon the part of citizens of the United States to take personal property upon the same terms and conditions as residents and citizens of the respective countries of which such aliens are residents. It shall be presumed that such reciprocal rights exist and this presumption shall be conclusive unless prior to the hearing on any petition for distribution of all or a portion of such property to an alien heir, devisee or legatee not residing within the United States or its territories a petition is filed by any person interested in the estate requesting the court to find that either one or both of such reciprocal rights does not or do not exist as to the country of which such alien heir, devisee or legatee is resident. Upon the hearing of such petition the burden of establishing the nonexistence of such reciprocal right or rights shall be upon the petitioner. Notice of such hearing shall be given in the manner provided by Section 1200 of this code." (Stats. 1945, p. 2208, ch. 1160. In effect Sept. 15, 1945.)

The question presented for decision is whether on November 24, 1946, when the testator died, the law of Germany accorded to American citizens a "reciprocal right" to take personal property by will or succession "upon the same terms and conditions as residents and citizens" of Germany, pursuant to the terms of the above quoted section.

Appellant here urges that the trial court erred and exceeded its jurisdiction in making the findings of fact, hereinabove quoted, and the conclusions of law based thereon.

In this connection, it is argued that after the unconditional surrender of May 8, 1945, Germany was occupied by an international organization known as Military Government for Germany. By agreement the inhabitants were governed by the Allied Control Council under a uniform rule applying to the whole of the former German territory. That as a result, such military government and the laws promulgated to carry out its purposes "controlled the legal substantive rights of the aliens in this case to property, internal and external, in the occupied territory; that under the form of government to which these aliens were subject,

the aliens in this case were not granted legal substantive vested rights or interests to property, including property in estates, in the State of California or elsewhere."

In other words, the establishment of such military government in Germany effected an abrogation of all vested rights theretofore existing under German civil law, including the right of inheritance.

In support of this theory, appellant introduced in evidence international agreements, government proclamations and various Military Government laws for the United States Zone, all of which are now before this court as exhibits in the case.

Appellant also called as an expert witness, David Brandon Bernstein, Esq., a California attorney admitted to the Bar in 1926, who was a Military Government officer and a Military Government Court Judge at Kassel and Frankfurt, Germany, from March of 1945 until October of 1948.

This witness in his early testimony stated that three military government laws prevented American citizens from succeeding to estates in Germany, to wit: MGUS Laws, 52, 53 and 59. However, he stated that on November 24, 1946, certain of the German courts were functioning, and that they "used the German Code, the German laws which were in existence prior to occupation, and which were not repealed, changed or modified by Military Government," referring specifically to the Fifth Book, of the German Civil Code, relating to inheritance. Also, that the Military Government Courts did not exercise jurisdiction over the laws of succession or inheritance in Germany and did not administer them, except in the interpretation of Law 52 or 53.

Law 52 authorized the blocking and control of properties of nonresident citizens of the Allied nations, including Americans. Its language indicates that its aim is to preserve and not to destroy the interests and property of nonresidents, and although it may prevent immediate enjoyment thereof, it does not affect the right of inheritance, as such. Mr. Bernstein ventured the opinion that under this law "the right to an inheritance is not interfered with," but the American heir cannot take possession of the property without a license from Military Government under

Law No. 53, the Foreign Exchange Control Law, and "then Military Government may or may not grant that license. That is discretionary."

The object of Law 59 was to return to the victims of Nazi persecution the properties of which they had been deprived by duress and other unlawful means. In any event, that law affected American and German citizens alike, and Mr. Bernstein so testified.

Article II of Proclamation No. 2 of Military Government dated September 19, 1945, provided that German law in force at the time of the occupation, except as theretofore abrogated, suspended, or modified by Military Government or the Control Council, should apply in each area of the United States zone of occupation until repealed or superseded by a new law enacted by the Military Government.

As heretofore mentioned, Wuerttemberg, the residence of legatees is within the United States Zone of Occupation.

Nowhere in Mr. Bernstein's testimony did he point to any specific military government legislation which changed or modified the German laws of inheritance. In fact the only repealing legislation brought to the attention of the trial court was that contained in Respondent's Exhibit 22-a: Law No. 1 of Control Council which expressly repealed those "laws of a political or discriminatory nature upon which the Nazi regime rested."

Respondent's witness Dr. Karl Von Lewinski, a national of Germany, also qualified as an expert on German law. He studied law in this country at Harvard and Columbia Law Schools and in 1907 was appointed a judge of the County Court at Berlin where he served for a year and a half. For the next 10 years he was an assistant in both the Prussian Department of Justice and the Federal Department of Justice and also a Justice of the Court of Appeals of Berlin. From 1922 to 1932 he served in the United States as German Agent for the Mixed Claims Commission, Consular of the German Embassy and Consul General in New York. Upon his return to Germany in 1932 he practiced law in Berlin until within three months of the trial herein, specializing in probate law.

He testified that he had handled four to five hundred cases in which Americans had inherited estates in Germany and vice versa: that before the war the right to inherit was recognized and the assets transferred; that the German inheritance laws are contained in the German Civil Code, Fifth Book, and that article 154 of the Weimar Constitution enacted in 1919 recognized and guaranteed the right to inherit in accord with the Civil Code. Also, at the time here in question, there were no other laws in Germany having any bearing on the right of inheritance.

Article 154 of the Constitution and sections 1922 to 1942, inclusive, of the Fifth Book of German Civil Code, Law of Inheritance, Order of Succession, were identified by the witness and translations thereof were introduced in evidence.

With respect to the pertinent sections of the Civil Code, this witness testified that no distinction is made between nationals of Germany and foreigners, including American citizens; that under the German laws of inheritance any foreigner may succeed to an estate in Germany on the same terms as a national of that country.

When asked: "... the civil code relating to inheritance as set forth in the Fifth Book, is that in existence in Germany today?" appellant objected on the ground that an enemy alien is not entitled to testify in courts of this State and moved to strike the testimony. The court thereupon denied the motion and overruled the objection. The witness answered the question as follows: "The German Civil Code as it existed before the war is still in force, with changes, with amendments, which have been made by Military Government legislation." He was then asked to state "whether or not the Military Government had made any changes which have repealed, abrogated or suspended any of the German laws of inheritance, as set forth in the Fifth Book and as set forth in the Government Exhibit containing Sections 1922 to 1942, inclusive?" To this he replied: "The Fifth Book of the Civil Code, particularly the sections mentioned by counsel, 1922 to 1942, have not been changed by Control Council legislation. . . . And they are still in force." He further gave as his opinion that under German law, a

German national and foreigners, including American citizens, all inherit on the same terms and conditions.

Dr. Von Lewinski was then interrogated by the trial court as follows:

> "By the Court: Q. Doctor, as you know, the Court is here concerned with the question of a right of aliens, not residing within the United States, to take either real or personal property, or the proceeds thereof, in this estate (Sic) by succession or testamentary disposition, and that is governed by Section 259 of our Probate Code, and the question before me is to determine: Did there exist on November 23, 1946, in the Province of Wuerttemberg . . . a reciprocal right upon the part of citizens of the United States to take real and personal property and the proceeds thereof upon the same terms and conditions as residents and citizens of Wuerttemberg. . . . Now, this question is really reasonably simple. We will reduce it down to the elemental question and I will ask you then whether or not a nephew or nephews named as residuary legatees in a last will and testament who were United States citizens would have the right to inherit under that will property . . . of the decedent, the testator, located in the state of Wuerttemberg, Germany?
>
> "The Witness: According to the German inheritance law, the inheritance passes to persons who are either appointed heirs by the last will of another person, or to those persons who according to the law of succession will succeed to the estate as heirs. The German law speaks of persons when it speaks of the heirs of the decedent. The German inheritance law does not make any difference between the nationals of Germany or of any other country. As I said, it speaks only of persons. The law of inheritance was in force at the time of the decedent's death. Under the law American citizens are appointed heirs. The inheritance passed and by virtue of the German inheritance law at the time of death to the heirs. That means the title passed to the heirs because they had the right to inherit."

The foregoing resume discloses amply sufficient evidence to support not only the findings of fact objected to by appellant, but as well the conclusions of law based thereon, particularly "That on the date of death of the decedent, Christian F. Reihs, to wit: November 24, 1946, there existed under the laws of Germany a reciprocal right upon the part of citizens of the United States to take by inheritance personal property or the proceeds thereof, upon the same terms and conditions as residents and citizens of Germany."

As was so aptly stated in the very recent case of Estate of Schluttig (Advance Report Citation: 36 A. C. 367, 374.) 36 Cal. 2d——, —— (224 P. 2d 695): "Considering the nature of the evidence before the trial court, it is clear that the issue to be determined involved questions as to the existence, translation, interpretation and effect of the laws of Germany and Austria. Upon these subjects the superior court heard highly conflicting testimony by experts upon the laws of those countries and their application under given circumstances. The determination of the issue, therefore, was one of fact, and the finding of the trial court, if supported by substantial evidence will not be disturbed on appeal."

Appellant cites as error the ruling of the trial court which placed the burden of proof under section 259, probate Code, upon the petitioner.

This question is settled by the holding in Estate of Giordano, 85 Cal. App. 2d 588, 590 (193 P. 2d 771). It is there pointed out that said section 259 was added to the code in 1941, and remained in effect until September 15, 1945, when it was amended (Stats. 1945, ch. 1160). It was again amended effective as of September 19, 1947 (Stats. 1947 ch. 1042). In the cited case it was said: "It thus appears that at the time of the death of the deceased, and up to September 15, 1945, the burden of proving such reciprocal rights rested on the foreign alien heir, or in this case, the Alien Property Custodian who represented her. Commencing on September 15, 1945, and to September 19, 1947, the burden of proof rested on Anna Maria Fino (petitioner). The enactments effective on September 19, 1947,

returned the burden of proving reciprocal rights to the foreign heir, or here, the Alien Property Custodian."

Under the terms of the statute as of the date of death of testator here, November 24, 1946, the burden of proof was upon petitioner. Hence, there was no error in the ruling.

With respect to appellant's claim that section 259, *supra*, is unconstitutional by reason of conflict with the Constitution of the United States, in that it attempts to grant rights which have been reserved to the federal government, our Supreme Court in Palermo v. Stockton Theatres, Inc., 32 Cal. 2d 53, 64 (195 P. 2d 1), stated as follows: "Subsequent to our granting a hearing in this case, the Supreme Court of the United States, in Clark v. Allen (1947), 331 U. S. 503 (67 S. Ct. 1431, 91 L. Ed. 1633, 1638, 170 A. L. R. 953), rejected a similar contention with reference to section 259 of the California Probate Code. It was there held that although under the provisions of the state law the right of a nonresident alien to take property in California by will or succession depends upon a reciprocal right of United States residents and citizens to take property in such alien's country, and although the existence of such reciprocal right depends in part at least upon treaties between the government of the United States and that of the particular foreign country involved, the California statute is 'not unconstitutional as an extension of state power into a field of foreign affairs exclusively reserved to the federal government, and that California has not entered into the forbidden domain of negotiating with a foreign country or of making a compact with it contrary to article I, section 10, of the federal Constitution.' (Estate of Knutzen (1948), 31 Cal. 2d 573, 577 (191 P. 2d 747); see also Estate of Bevilacqua (1948), 31 Cal. 2d 580, 582 (191 P. 2d 752).)"

As has been stated repeatedly, a reviewing court will not interfere with the action of the trial court in denying or granting a motion for new trial, unless a manifest and unmistakable abuse of discretion appears. (Jordan v. Schrieber, 74 Cal. App. 2d 800, 805 (169 P. 2d 394).) No abuse of discretion has been shown here.

This cause was fully and fairly tried, and no errors ap-

pear in the record. The findings and judgment are amply supported by the evidence.

For the reasons stated, the judgment appealed from is affirmed. The purported appeal from the order denying motion for new trial is dismissed.

White, P. J., and Doran, J., concurred.

Findings of Fact and Conclusions of Law

In the Matter of the Estate of Christian F. Reihs, Deceased, No. 263,185, in the Superior Court of the State of California, in and for the County of Los Angeles.

The petition of Herman Weinmann under Probate Code Section 259 and For Decree Determining Interest in Estate and the petition of the Executor for instruction and for further partial distribution and objections thereto, came on regularly for hearing and the taking of evidence before the above-entitled court in Department 6 thereof, the Honorable John Gee Clark, Judge presiding, on June 27, 1949, and the said hearing having continued thereafter to and including June 29, 1949, at each of which times the petitioner, Herman Weinmann, appeared by his attorney, Pierce Lonergan, Esq., and the Executor appeared by its attorney, George Gardner, Esq., and the Attorney General of the United States appeared by his attorneys, James M. Carter, United States Attorney for the Southern District of California, Clyde C. Downing, Assistant United States Attorney, and Valentine C. Hammack and Lillian C. Scott, Special Assistants to the Attorney General, and evidence, oral and documentary, having been introduced and the parties hereto having submitted briefs and the matter having been submitted for decision on September 30, 1949, the Court now makes its findings of fact and conclusions of law constituting its decision herein and orders that judgment and decree be entered in accordance therewith.

Findings of Fact

I

That all notices of the time and place of the hearing of said petitions have been regularly and duly given in all respects in the manner and for the periods required by law.

II

That Christian F. Reihs died testate in Los Angeles County, State of California, on November 24, 1946; that at the time of his death, Christian F. Reihs was a citizen of the United States and a resident of Los Angeles County, State of California; that said decedent left an estate consisting of personal property situated wholly within the State of California.

III

That Bank of America National Trust and Savings Association, is the duly appointed, qualified, and acting executor of the will of the said decedent, Christian F. Reihs, which said will was duly admitted to probate on the 3rd day of January, 1947.

IV

That the decedent, Christian F. Reihs, made certain devises and bequests to residents of the United States, corporations, and charitable institutions organized and existing under and by virtue of the laws of the United States or of citizens of the United States, as follows: * * * (Relates to bequests to American residents.)

Said decedent also bequeathed to Mrs. Elsa Reiss Strobel of Schorndorf, Wuerttemberg, Germany, $5,000; to District Hospital, City of Schorndorf, Wuerttemberg, Germany, $5,000; to Old Folks Welfare, City of Schorndorf, Wuerttemberg, Germany, $5,000; to Old Folks Welfare, Town of Haubersbronn, Wuerttemberg, Germany, $2,000; to Old Folks Welfare, Town of Grosshappach, Germany, $2,000; and bequeathed all the rest, residue, and remainder of his estate to his nephews, Arl Reiss and Gustav Reiss, both of the City of Schorndorf, Wuerttemberg, Germany. * * * (Identifies German charitable institutions by correct names.)

V

That Mrs. Elsa Reiss Strobel, Karl Reiss, designated in said will as "Carl" Reiss, and Gustav Reiss survived the

decedent and were residents and citizens of Germany at the time of the death of the decedent.

VI

That Herman Weinmann is a citizen and resident of the United States and a half-cousin of the decedent, Christian F. Reihs, and next of kin of the decedent residing in this country.

VII

That the Attorney General of the United States, by virtue of Vesting Order No. 9988, dated October 9, 1947, vested all of the rights, title, interest, and claim of any kind or character whatsoever of Mrs. Elsa Reiss Strobel, Carl Reiss and Gustav Reiss and of their heirs, in and to the estate of Christian F. Reihs, deceased.

VIII

That the Attorney General of the United States did not vest the interest of the following named foreign beneficiaries: District Hospital, City of Schorndorf, Wuerttemberg, Germany; Old Folks Welfare, City of Schorndorf, Wuerttemberg, Germany; Old Folks Welfare, Town of Haubersbronn, Wuerttemberg, Germany; Old Folks Welfare, Town of Grosshappach, Germany.

IX

That the time for filing claims against said estate has expired, and all claims have been paid, all debts and expenses of said estate have been paid except remaining costs of administration, inheritance and estate taxes; that upon a determination of the persons entitled to participate in the said estate and payment of expenses of administration, inheritance and estate taxes, the estate is in all respects ready to be closed.

X

That under the German laws of inheritance in effect at the time of the death of Christian F. Reihs, on November 24, 1946, and still in force, title to an estate accruing in

Germany passes by force of law as of the time of decedent's death to the person or persons designated by will or by the law of succession, regardless of nationality, domicile, or residence of said distributee or distributees.

XI

That under the laws, proclamations and regulations issued and promulgated by the Allied Control Council for Germany and the Military Government for Germany, United States Zone, or otherwise, the German laws of inheritance, under which title to an estate accruing in Germany passes by force of law as of the time of decedent's death to the person or persons designated by will or by the law of succession, regardless of nationality, domicile or residence of such distributee or distributees, have remained in full force and effect.

XII

That under the German laws of inheritance existing as of the date of death of the decedent, to wit: November 24, 1946, the right to receive an inheritance followed the right to inherit the same.

Conclusions of Law

From the foregoing facts, the Court makes the following conclusions of law:

I

That on the date of the death of the decedent, Christian F. Reihs, to wit: November 24, 1946, there existed under the laws of Germany a reciprocal right upon the part of citizens of the United States to take by inheritance personal property or the proceeds thereof, upon the same terms and conditions as residents and citizens of Germany.

II

That the German laws of inheritance which grant the right of citizens of the United States to take property located in Germany by way of inheritance upon the same terms and conditions as residents and citizens of Germany

have not been impaired, superseded, or repealed by the laws, proclamations and regulations issued and proclaimed by the Allied Control Council for Germany and the Military Government for Germany, United States Zone, or otherwise.

III

That the right of citizens of the United States to inherit a German estate, as granted by the German laws of inheritance is a reciprocal right to take by inheritance as contemplated and required by Section 259 of the California Probate Code.

IV

That upon the death of the decedent, Christian F. Reihs, there passed to and vested in * * * (designated American residents and respective bequests); in Mrs. Elsa Reiss Strobel, of Schorndorf, Wuerttemberg, Germany, $5,000; in District Hospital, City of Schorndorf, Wuerttemberg, Germany, $5,000; in Old Persons Home of the City of Schorndorf, Wuerttemberg, Germany (erroneously designated as "Old Folks Welfare, City of Schorndorf"), $5,000; in Local Welfare Committee of the Town of Haubersbronn, Wuerttemberg, Germany (erroneously designated as "Old Folks Welfare, Town of Haubersbronn"), $2,000; in Local Welfare Organization of the Village of Grosshappach, Germany (erroneously designated as "Old Folks Welfare, Town of Grosshappach"), $2,000; and all the rest, residue and remainder of his estate to Karl Reiss and Gustav Reiss, both of the City of Schorndorf, Wuerttemberg, Germany, nephews of the decedent, in equal shares remaining after distribution of the specific bequests provided for, subject to costs of administration.

V

That Herman Weinmann is not entitled to distribution of any part of the money or other personal property specifically devised and bequeathed to Mrs. Elsa Reiss Strobel, District Hospital, Old Folks Welfare, City of Schorndorf; Old Folks Welfare, Town of Haubersbronn; Old Folks Wel-

fare, Town of Grosshappach; Karl Reiss and Gustav Reiss, or any part of the money or other personal property constituting the residuary estate of the said decedent pursuant to Section 259, California Probate Code, or otherwise.

VI

That all of the right, title and interest of Mrs. Elsa Reiss Strobel, Karl Reiss and Gustav Reiss in and to the estate of the said decedent is vested in the Attorney General of the United States by virtue of Vesting Order No. 9988, dated October 9, 1947.

VII

That the petitioner, Herman Weinmann, has failed to sustain the burden of establishing that the laws of Germany do not grant reciprocal rights to inherit upon the same terms and conditions as residents and citizens of Germany.

VIII

That the Attorney General of the United States is entitled to distribution of the sum of $5,000, constituting the said bequest to Elsa Reiss Strobel, and the said Attorney General of the United States is entitled to distribution of all of the property constituting the residuary estate of the decedent, Christian F. Reihs, bequeathed in said will to Karl Reiss and Gustav Reiss after distribution of the specific bequests provided for in said will and after payment of lawful expenses of administration and inheritance and estate taxes.

Let the decree and judgment of this Court be entered accordingly.

Dated: This 16 day of January, 1950.

JOHN GEE CLARK,
Judge of the Superior Court.

Decree Determining Interests in Estate under Section 259, California Probate Code, and for Distribution

In the Matter of the Estate of Christian F. Reihs, Deceased, No. 263,185, in the Superior Court of the State of California, in and for the County of Los Angeles.

The petition of Herman Weinmann under Probate Code Section 259 and For decree Determining Interest in Estate and the petition of the Executor for instructions and for further partial distribution and objections thereto, came on regularly for hearing and the taking of evidence before the above-entitled Court in Department 6 thereof, the Honorable John Gee Clark, Judge presiding, on June 27, 1949, and the said hearing having continued thereafter to and including June 29, 1949, at each of which times the petitioner, Herman Weinmann, appeared by his attorney, Pierce Lonergan, Esq., and the Executor appeared by its attorney, George Gardner, Esq., and the Attorney General of the United States appeared by his attorneys, James M. Carter, United States Attorney for the Southern District of California, Clyde C. Downing, Assistant United States Attorney, and Valentine C. Hammack and Lillian C. Scott, Special Assistants to the Attorney General, and evidence, oral and documentary, having been introduced and the parties hereto having submitted briefs and the matter having been submitted for decision on September 30, 1949, and the Court having duly made and filed herein its findings of fact and conclusions of law and having determined that the Attorney General of the United States is entitled to judgment herein upon the issue of reciprocity as provided by Section 259 et seq., California Probate Code.

It Is Hereby Ordered, Adjudged and Decreed by the Court that Christian F. Reihs died testate in Los Angeles County, State of California, on November 24, 1946, leaving surviving him, among others, Mrs. Elsa Reiss Strobel, Karl Reiss and Gustav Reiss, and that all of said persons were residents and citizens of Germany on November 24, 1946.

It Is Further Ordered, Adjudged and Decreed by the Court that upon the death of the decedent, Christian F. Reihs, there passed to and vested in the Town of Silver

City, New Mexico (for charity), a legatee under the will of the decedent, the legacy of $5,000 provided by said will.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the death of the decedent, Christian F. Reihs, there passed to and vested in the Public Schools of Silver City, New Mexico (for charity), a legatee under the will of the decedent, the legacy of $5,000 provided by said will.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that upon the death of the decedent, Christian F. Reihs, there passed to and vested in the Grant County Hospital, Silver City, New Mexico (for charity), a legatee under the will of the decedent, the legacy of $5,000 provided by said will.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that upon the death of the decedent, Christian F. Reihs, there passed to and vested in State Teachers Public Library, Silver City, New Mexico (for books) a legatee under the will of the decedent, the legacy of $5,000 provided by said will.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that upon the death of the decedent, Christian F. Reihs, there passed to and vested in Carrie Tingsley Childrens Hospital, Hot Springs, New Mexico, $2,000.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that upon the death of the decedent, Christian F. Reihs, there passed to and vested in the City of Los Angeles, California (park fund), a legatee under the will of the decedent, the legacy of $2,000 provided by said will.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that upon the death of the decedent, Christian F. Reihs, there passed to and vested in the city of Los Angeles, California (library fund), a legatee under the will of the decedent, the legacy of $2,000 provided by said will.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that upon the death of the decedent, Christian F. Reihs, there passed to and vested in Lincoln Hospital, Los Angeles, California, a legatee under the will of decedent, the legacy of $2,000 provided by said will.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that upon the death of the decedent, Christian F. Reihs,

there passed to and vested in the Old Peoples Home, 1720 McArthur Avenue, Oakland, California, a legatee under the will of the decedent, the legacy of $2,000 provided by said will.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that upon the death of the decedent, Christian F. Reihs, there passed to and vested in Herman Weinmann, 223 69th Street, Gutenberg, New Jersey, a legatee under the will of the decedent, the legacy of $1,000 provided by said will.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that upon the death of the decedent, Christian F. Reihs, there passed to and vested in William Weinmann, 3935 46th Street, Long Island City, New York, a legatee under the will of the decedent, the legacy of $1,000 provided by said will.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that upon the death of the decedent, Christian F. Reihs, there passed to and vested in Mrs. Anna Weinmann, 195-15 45th Avenue, Flushing, New York, a legatee under the will of the decedent, the legacy of $1,000 provided by said will.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that upon the death of the decedent, Christian F. Reihs, there passed to and vested in Mrs. Elsie Francis, 195-15 45th Avenue, Flushing, New York, a legatee under the will of the decedent, the legacy of $1,000 provided by said will.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that upon the death of the decedent, Christian F. Reihs, there passed to and vested in Mrs. Elsa Reiss Stroble, of Schorndorf, Wuerttenberg, Germany, a legatee under the will of the decedent, the legacy of $5,000 provided by said will.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that upon the death of the decedent, Christian F. Reihs, there passed to and vested in District Hospital, City of Schorndorf, Wuerttemberg, Germany, a legatee under the will of the decedent, the legacy of $5,000 provided by said will.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that upon the death of the decedent, Christian F. Reihs, there passed to and vested in Old Persons Home of the

City of Schorndorf, Wuerttemberg, Germany, erroneously designated as "Old Folks Welfare, City of Schorndorf," a legatee under the will of the decedent, the legacy of $5,000 provided by said will.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that upon the death of the decedent, Christian F. Reihs, there passed to and vested in Local Welfare Committee of the Town of Haubersbronn, Wuerttemberg, Germany, erroneously designated as "Old Folks Welfare, Town of Haubersbronn," a legatee under the will of the decedent, the legacy of $2,000 provided by said will.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that upon the death of the decedent, Christian F. Reihs, there passed to and vested in Local Welfare Organization of the Village of Grosshappach, Germany, erroneously designated as "Old Folks Welfare, Town of Grosshappach," a legatee under the will of the decedent, the legacy of $2,000 provided in said will.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that upon the death of the decedent, Christian F. Reihs, there passed to and vested in Karl Reiss and Gustav Reiss, the residuary legatees named in said will, in equal shares, the rest, residue, and remainder of the property and estate of said decedent.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that all of the right, title, and interest of Mrs. Elsa Reiss Strobel, Karl Reiss and Gustav Reiss, in and to the estate of the decedent, Christian F. Reihs, vested in the Attorney General of the United States by virtue of vesting order 9988 dated October 9, 1947.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that the following legatees:

Town of Silver City, New Mexico (for charity) $5,000;
Public Schools of Silver City, New Mexico (for charity), $5,000;
Grant County Hospital, Silver City, New Mexico (for charity), $5,000;
State Teachers Public Library, Silver City, New Mexico (for books), $5,000;

Carrie Tingley Childrens Hospital, Hot Springs, New Mexico, $2,000;

City of Los Angeles, California (for Park Fund), $2,000;

City of Los Angeles, California (for Library Fund), $2,000;

Lincoln Hospital, Los Angeles, California, $2,000;

Old Peoples Home, 1720 MacArthur Ave., Oakland, California, $2,000;

Herman Weinmann, 223 69th St., Gutenberg, New Jersey, $1,000;

William Weinmann, 3935 46th St., Long Island City, New York, $1,000;

Mrs. Anna Weinmann, 195-15 45th Ave., Flushing, New York, $1,000;

Mrs. Elsie Francis, 195-15 45th Ave., Flushing, New York, $1,000;

District Hospital, City of Schorndorf, Wuerttemberg, Germany, $5,000;

Old Persons Home of the City of Schorndorf, Wuerttemberg, Germany (erroneously designated as "Old Folks Welfare, City of Schorndorf"), $5,000;

Local Welfare Committee of the Town of Haubersbronn, Wuerttemberg, Germany (erroneously designated as "Old Folks Welfare, Town of Haubersbronn"), $2,000;

Local Welfare Organization of the Village of Grosshappach, Germany, (erroneously designated as "Old Folks Welfare, Town of Grosshappach"), $2,000;

are entitled to distribution of the respective legacies as provided by the said will of the decedent, Christian F. Reihs.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that the Attorney General of the United States is entitled to distribution of the sum of $5,000 constituting the legacy given to Mrs. Elsa Reiss Strobel by said will, and that the said Attorney General of the United States is entitled to distribution of all of the property constituting the residuary estate of the decedent, Christian F. Reihs, bequeathed in said will to Karl Reiss and Gustav Reiss, after payment of legacies, lawful expenses of administration and inheritance and estate taxes.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the court that Herman Weinmann is not entitled to distribution of any of the money or other personal property bequeathed in said will to Elsa Reiss Strobel, Wuerttemberg, Germany, District Hospital, City of Schorndorf, Wuerttemberg, Germany, Old Folks Welfare, City of Schorndorf, Wuerttemberg, Germany, Old Folks Welfare, Town of Haubersbronn, Wuerttemberg, Germany, Old Folks Welfare, Town of Grosshappach, Germany, or any of the money or other personal property constituting the rest and residue of the estate of the decedent, Christian F. Reihs, bequeathed to Karl Reiss and Gustav Reiss.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that Herman Weinmann is entitled to receive from the said estate only the legacy of $1,000 given to him by the will of the said decedent.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by the Court that the petitioner, Herman Weinmann is not entitled to recover costs herein.

Dated: This 16 day of January, 1950.

JOHN GEE CLARK,
Judge of the Superior Court.

APPENDIX B

UNITED STATES CONSTITUTION

Article II—The President

Section 1, Paragraph 1: The executive Power shall be vested in a President of the United States of America.

Section 2, Clause 1: The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Services of the United States; * * *.

Article VI—Supreme Law of Land

Clause 2: Supreme Law of Land.

This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; and the Judges in every States shall be bound thereby, anything in the Constitution or Laws of any State to the contrary nothwithstanding.

International Agreements

For Government of Germany, After Surrender. Declaration Regarding Defeat of Germany, June 5, 1945; Department of State Bulletin, Vol. XII, No. 311, pp. 1051, 1055:

> "There is no central Government or authority in Germany capable of accepting responsibility for the maintenance of order, the administration of the country and compliance with the requirements of the victorious powers." (Second paragraph).
>
> "The Representatives of the Supreme Commands of the United Kingdom, the United States of America, the Union of Soviet Socialist Republics and the French Republic, herein called the 'Allied Representatives,' acting by authority of their respective Governments and in the interests of the United Nations, accordingly make the following Declaration: (Fourth Paragraph).
>
> "The Governments of the United Kingdom, the United States of America and the Union of Soviet Socialist Republics, and the Provisional Government of the French Republic, hereby assume supreme authority with respect to Germany, including all the powers possessed by the German Government, the High Command and any state, municipal or local government or authority. The assumption for the purpose stated

above, of the said authority and powers does not effect the annexation of Germany. (Fifth Paragraph)

"The Governments of the United Kingdom, the United States of America and the Union of Soviet Socialist Republics and the Provisional Government of the French Republic, will hereafter determine the boundaries of Germany or any part thereof and the status of Germany or of any area at present being part of German territory. (Sixth Paragraph).

"In virtue of the supreme authority and powers thus assumed by the four Governments, the Allied Representatives announce the following requirements arising from the complete defeat and unconditional surrender of Germany with which Germany must comply: (Seventh Paragraph).

Article 13

"(a) In the exercise of the supreme authority with respect to Germany assumed by the Governments of the United Kingdom, the United States of America and the Union of Soviet Socialist Republics and the Provisional Government of the French Republic, the four Allied Governments will take such steps including the complete disarmament and demilitarization of Germany, as they deem requisite for future peace and security.

"(b) The Allied Representatives will impose on Germany additional political, administrative, economic, financial, military and other requirements arising from the complete defeat of Germany. The Allied Representatives, or persons or agencies duly designated to act on their authority will issue proclamations, orders, ordinances and instructions for the purpose of laying down such additional requirements and of giving effect to the other provisions of this Declaration. All German authorities and the German people shall carry out unconditionally the requirements of the Allied Representatives, and shall fully comply with all such proc-

lamations, orders, ordinances and instructions. (Page 1055)

5 June, 1945,
1800 Hours Central European Time.

Signed by the Allied Representatives:

DWIGHT EISENHOWER,
General of the Army, USA.

ZHUKOV.

B. L. MONTGOMERY.

J. DE LATTRE-TASSIGNY,
General d'Armee.

Tripartite Conference of Berlin—Potsdam—Dept. of State Bulletin, Vol. XIII, No. 319, pp. 153, 154, 155:

The Political and Economic Principles To Govern the Treatment of Germany in the Initial Control Period.

III—Germany.

A. Political Principles.

"1. In accordance with the Agreement on Control Machinery in Germany supreme authority in Germany is exercised, on instruction from their respective Governments, by the Commanders in Chief of the armed forces of the United States of America, the United Kingdom, the Union of Soviet Socialist Republics, and the French Republic, each in his own zone of occupation, and also jointly in matters affecting Germany as a whole, in their capacity as members of the Control Council.

"2. So far as is practical there shall be uniformity of treatment of the German population throughout Germany. (Page 154).

"9. (IV). For the time being no central German government shall be established . . ." (Page 154).

B. Economic Principles.

"18. Appropriate steps shall be taken by the Control Council to exercise control and the power of disposition over German owned external assets not already under the control of United Nations which have taken part in the war against Germany. (Page 155).

Date: 2 August 1945.

Approved: J. V. Stalin, Harry S. Truman, C. R. Attlee.

Agreement Between Allied Governments on Certain Additional Requirements to Be Imposed on Germany. Dept. of State Bulletin, Vol. XIII, No. 328, Oct. 7, 1945, pp. 515, 516, 521.

To the People of Germany

"We, the Allied Representatives, Commanders in Chief of the forces of occupation of the United Kingdom, the United States of America, the Union of Soviet Socialist Republics, and the French Republic, pursuant to the Declaration regarding the defeat of Germany, signed at Berlin on the 5th June, 1945, hereby announce certain additional requirements arising from the complete defeat and unconditional surrender of Germany with which Germany must comply (in so far as these have not already been fulfilled), as follows (Page 515):

Section III

"5. The Allied Representatives will regulate all matters affecting Germany's relations with other countries. No foreign obligations, undertakings or commitments of any kind will be assumed or entered into by or on behalf of German authorities or nationals without the sanction of the Allied Representatives.

"6. The Allied Representatives will give directions concerning the abrogation, bringing into force, revival or application of any treaty, convention or other inter-

national agreement, or any part or provision thereof, to which Germany is or has been a party.

"7(a). In virtue of the unconditional surrender of Germany, and as of the date of such surrender, the diplomatic, consular, commercial and other relations of the German State with other States have ceased to exist (Pages 515, 516).

Section V

"12. The Allied Representatives will exercise such control as they deem necessary over all or any part or aspect of German finance, agriculture (including forestry), production and mining, public utilities, industry, trade, distribution and economy generally, internal and external, and over all related or ancillary matters, including the direction or prohibition of the manufacture, production, construction, treatment, use and disposal of any buildings, establishments, installations, public or private works, plant, equipment, products, materials, stocks or resources. Detailed statements of the subjects to which the present provision applies, together with the requirements of the Allied Representatives in regard thereto, will from time to time be communicated to the German authorities (Page 516).

Section XI

"44. In any proceedings before any German Court or authority judicial notice shall be taken of the provisions of the Declaration and of all proclamations, orders, ordinances and instructions issued thereunder, which shall override any provisions of German law inconsistent therewith (Page 521).

Section XIII

"48. In the event of any doubt as to the meaning or interpretation of any term or expression in the Declaration and in any proclamations, orders, ordinances and instructions issued thereunder, the decision

of the Allied Representatives shall be final" (Page 521).

Done at Berlin, the 20th day of September, 1945.

B. L. MONTGOMERY,
Field Marshal;
L. KOELTZ,
V. D. SOKOLOVSKY,
DWIGHT D. EISENHOWER.

APPENDIX C

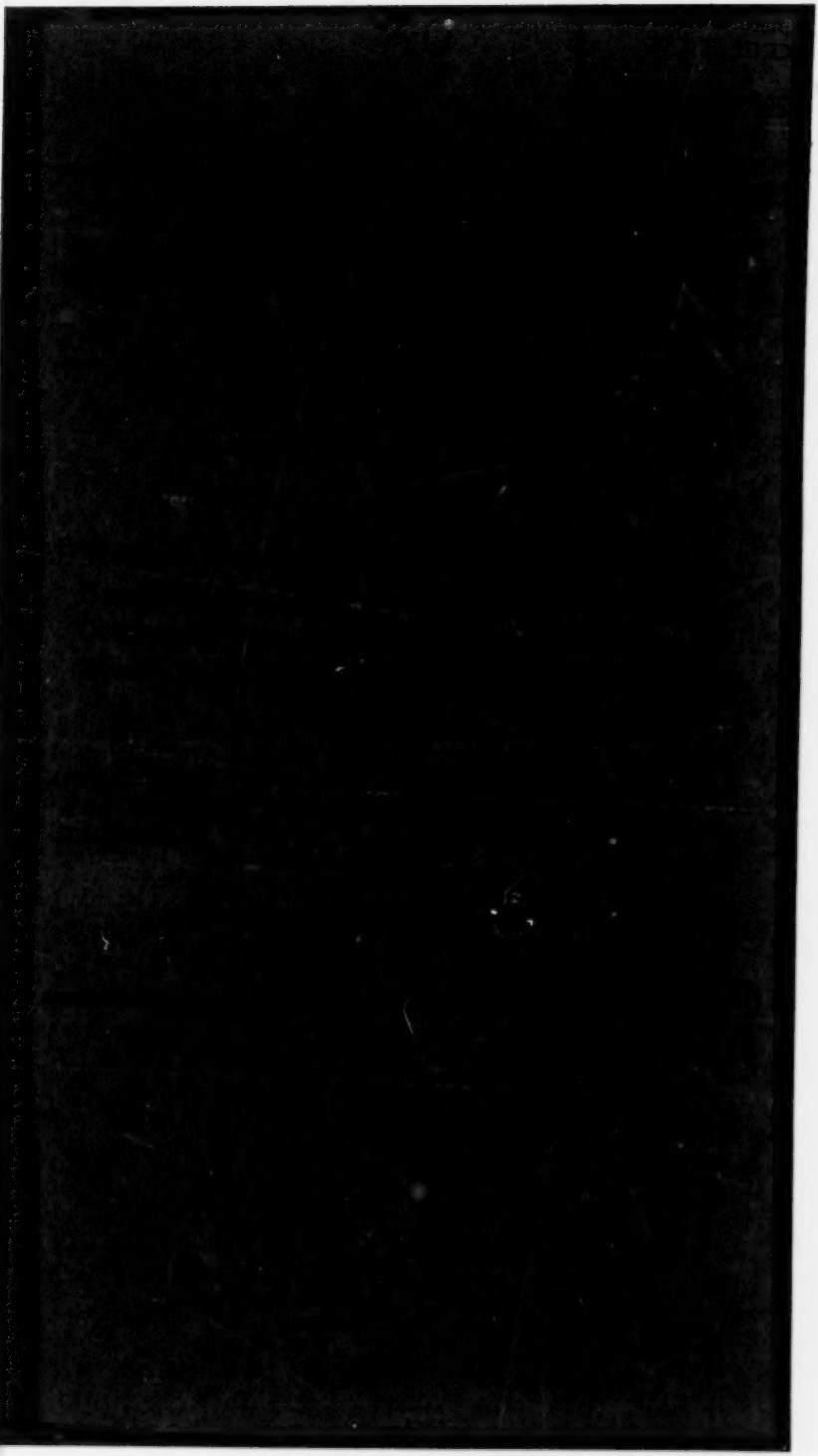
CALIFORNIA STATUTES, 1945, P. 2208, Chap. 1160

(California Probate Code—Deering—Sect. 259)

"The right of aliens not residing within the United States or its territories to take real property in this State by succession or testamentary disposition, upon the same terms and conditions as residents and citizens of the United States is dependent in each case upon the existence of a reciprocal right upon the part of citizens of the United States to take real property upon the same terms and conditions as residents and citizens of the respective countries of which such aliens are residents and the right of aliens not residing in the United States or its territories to take personal property in this State by succession or testamentary disposition, upon the same terms and conditions as residents and citizens of the United States is dependent in each case upon the existence of a reciprocal right upon the part of citizens of the United States to take personal property upon the same terms and conditions as residents and citizens of the respective countries of which such aliens are residents. It shall be presumed that such reciprocal rights exist and this presumption shall be conclusive unless prior to the hearing on any petition for distribution of all or a portion of such property to an alien heir, devisee or legatee not resid-

ing within the United States or its territories a petition is filed by any person interestd in the estate requesting the court to find that either one or both of such reciprocal rights does not or do not exist as to the country of which such alien heir, devisee or legatee is resident. Upon the hearing of such petition the burden of establishing the nonexistence of such reciprocal right or rights shall be upon the petitioner. Notice of such hearing shall be given in the manner provided by Section 1200 of this code."

(6261)



IN THE DISTRICT COURT OF APPEAL, SECOND APPELLATE DISTRICT, STATE OF CALIFORNIA DIVISION ONE

OCTOBER TERM, 1951

2nd Civil No. 17913

IN THE MATTER OF THE ESTATE OF CHRISTIAN F. REIHS, DECEASED,

HERMAN WEINMANN, PETITIONER AND APPELLANT

v.

J. HOWARD MCGRATH, ATTORNEY GENERAL OF THE UNITED STATES, AS SUCCESSOR TO ALIEN PROPERTY CUSTODIAN, OBJECTOR AND RESPONDENT,

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, A CORPORATION, EXECUTOR

ON APPEAL TO THE UNITED STATES SUPREME COURT

MOTION TO DISMISS OR AFFIRM

Pursuant to Rule 12, Paragraph 3, of the Revised Rules of the Supreme Court of the United States, appellee J. Howard McGrath, the Attorney General of the United States, moves that the appeal be dismissed or that the judgment of the District

Court of Appeal of the State of California be affirmed.

This is a direct appeal from the final judgment of the District Court of Appeal (Second Appellate District, Division One), of the State of California, entered on February 13, 1951. This judgment became final on April 13, 1951, when the Supreme Court of California denied appellant's petition for a hearing. Appeal was allowed by the Presiding Justice of the District Court of Appeal on June 21, 1951, and appeal papers were served on the United States Attorney for the Southern District of California on June 25, 1951.

I

In 1948, appellant petitioned the Superior Court of the State of California in and for the County of Los Angeles to determine interests in the estate of Christian F. Reihs. Appellee[1] appeared in these proceedings as the successor to three German nationals whose interests in the estate he had vested pursuant to the Trading with the Enemy Act (40 Stat. 411, as amended, 50 U.S.C. App. §§ 1, *et seq.*)[2]

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[1] Appellee succeeded to the powers and duties of the Alien Property Custodian on October 14, 1946, Executive Order 9788, 11 F. R. 981.

[2] Appellee also appears (pursuant to authority vested in him by Section 5 of Executive Order 9095, 7 F. R. 1971, as amended) on behalf of certain German charitable institutions that have interests in this estate as legatees. For reasons of policy appellee has not vested these interests.

Christian F. Reihs, an American citizen, died testate on November 24, 1946, in Los Angeles County, his residence. His estate consisted entirely of personal property in California. His will (which was duly admitted to probate) provided for several bequests, among them a minor one to appellant, a naturalized American citizen who is the testator's half-cousin and his closest kin residing in the United States. Bequests were also made to two nephews and another relative of the decedent, all of whom reside in Schorndorf, Germany, a town within the United States Zone of Occupation; having determined that these legatees were enemy nationals, the appellee has vested their interests in the estate.

In his petition to the Superior Court, appellant alleged that on November 24, 1946 (when the testator died) American citizens had no right to take property from German estates. He therefore contended that certain German charitable institutions named as legatees in the will and the three legatees whose interests the Custodian had vested were ineligible to take by virtue of Section 259 of the Probate Code of California (Cal. Stat. 1945, c. 1160, p. 2208). That statute conditions the right of a non-resident alien to inherit in California upon the existence of a reciprocal right of an American citizen to inherit in the country of which the alien is a national. Accordingly, as the testator's next of kin in the United States, appellant claimed all

property bequeathed to the German legatees. Appellee denied the asserted absence, under the law governing the American zone of occupation in Germany, of rights in American citizens to inherit the estates of Germans residing in American-occupied Germany, and sought distribution to himself of the legacies covered by his vesting order.

The California statute (Sec. 259 of the Probate Code) placed on appellant the burden of showing that on November 24, 1946 (when the decedent died) the laws of American-occupied Germany failed to afford to American citizens reciprocal rights of inheritance. To sustain that burden, appellant introduced expert testimony and certain international agreements and proclamations dealing with the problems created by the collapse of the Nazi regime. He also introduced numerous enactments of both the Allied military government for Germany and the American military government for the United States zone of occupation. Appellee, in turn, offered both expert testimony and documentary evidence tending to show that on the day of testator's death American citizens enjoyed full inheritance rights in American-occupied Germany. The trial court filed Findings of Fact, Conclusions of Law (Statement as to Jurisdiction, App. A), and a Memorandum of Opinion. It held that appellant had failed to sustain his burden of proving that the laws of Germany, in effect on

November 24, 1946, denied reciprocal inheritance rights to American citizens. It found that on that date American citizens could inherit from German estates on the same basis as German citizens. Accordingly, it determined that the requirements of Section 259 of the California Probate Code were fulfilled, and that the German charitable institutions and appellee, as successor in interest to the three German individual legatees, were entitled to distribution. A final decree to that effect was entered on January 16, 1950. (Jurisdictional Statement, App. A.) The District Court of Appeal affirmed the decree and filed an opinion. (Jurisdictional Statement, App. A.) It later denied appellant's petition for rehearing. On April 12, 1951, the Supreme Court of California denied appellant's petition for a hearing; this appeal followed.

II

It is the law of California that the existence or non-existence of reciprocal inheritance rights of American citizens of any foreign country, within the meaning of Section 259 of the Probate Code, presents an issue of fact when, as here, the expert evidence concerning the existence, interpretation, and effect of the foreign country's laws is in sharp conflict. *Estate of Schluttig,* 36 A. C. 367, 375, 224 P. 2d 700; see also *Estate of Miller,* 104 A.C.A. 1 (Dist. Ct. of App. 1st Dist., May 1, 1951). That

factual issue was resolved by the trial court against the appellant; under the established rule, the District Court of Appeal affirmed the trial court's decision since its finding was deemed to be sustained by "amply sufficient evidence." If the foreign country involved had been Great Britain or France, there would be no doubt that this factual finding as to the foreign law would not, and could not, be reviewed by this Court (absent some reliance on a treaty between the United States and the other nation). For no federal question would be presented.

In an effort to overcome this obstacle to review by this Court, appellant claims that, as here applied, the California inheritance statutes contravene the Federal Constitution and federal "law." As we understand it, his argument seems to be that (a) the law of occupied Germany purports to govern both the right of Germans in occupied Germany to inherit from California testators as well as the right of Americans in California to inherit from German testators; (b) under this occupation law, properly construed, Germans are prohibited from inheriting property in California and Americans are likewise forbidden to inherit property in occupied Germany; (c) this occupation law is "federal law," paramount to any provisions California may make on these subjects, and therefore supersedes any inconsistent California statute; and (d) the proper interpretation of the

occupation law on these subjects presents federal questions for determination by this Court.[3]

There appear to be severe jurisdictional difficulties in this position.[4] But we do not stop to deal with them in detail because it is plain that the fundamental substantive contention on which appellant must base his entire claim—that the law of occupied Germany either prevents Germans from inheriting California property or forbids Americans from inheriting Germany property, or both—is entirely groundless. It is clear both that Germans may inherit from Americans and that

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[3] In short, appellant's argument seems to be either that (i) Section 259 of the California Probate Code prevents the German legatees from inheriting because, on the correct interpretation of German inheritance law, the reciprocity requirements of Section 259 cannot be fulfilled, or (ii) regardless of Section 259, and even if there be reciprocity, the German legatees cannot inherit because German law prevents their inheriting property in the United States, and this German law supersedes the general inheritance provisions of California law which would otherwise enable the German legatees to take (Sections 225 and 226 of the California Probate Code).

[4] For instance, [1] if appellant's argument is merely that as a matter of German occupation law Americans cannot inherit German property, and therefore that the California courts erred in holding reciprocity to exist, the case does not fall under 28 U.S.C. 1257(2), since the validity of Section 259 (or of other provisions of the California Probate Code) would not then be drawn into question, and review can be had here, if at all, only by writ of certiorari under 28 U.S.C. 1257(3); and [2] even if the California courts misread German occupation law to permit inheritance by Germans or by Americans, it is questionable whether such a misconstruction would raise an issue of federal law, cognizable under 28 U.S.C. 1257(2) or 1257(3), since it is German law which would be interpreted (cf., *Neely* v. *Henkel*, 180 U.S. 109, 119, 122; *In re Ross*, 140 U.S. 453, 464; *United States* v. *Curtiss-Wright Corp.*, 299 U.S. 304, 318).

Americans are permitted by the law of occupied Germany to inherit from Germans, and that being so, appellant's entire case falls as unsubstantial.

Appellant's position on the merits is squarely refuted by the evidences of German occupation law which were carefully considered by the California trial court and by the District Court of Appeal. It is undeniable that Americans are permitted by that law to inherit from Germans, and also that nothing in German law prevents Germans from inheriting property located abroad.

On the latter issue, appellant's position is also destroyed by *Clark* v. *Allen,* 331 U. S. 503, 514. In that case, the Court rejected appellee's contention that Section 259 is unconstitutional as an extension of State power into the field of foreign affairs. It also held that Article IV of the Treaty of Friendship, Commerce and Consular Rights with Germany of 1923, 44 Stat. 2132, which guarantees to German aliens the right to inherit real property in this country, survived the establishment of Allied control over Germany's foreign affairs and treaty obligations. The survival of this treaty demonstrates, in itself, that Germans in the American occupied zone were permitted, in 1946, to inherit American property. For if, as a matter of occupation policy, the military government had desired to suspend or impair the right of Germans to inherit property in the United States, it would have been absurdly inconsistent with that policy to main-

tain and enforce a treaty with the United States which expressly guarantees that right. Moreover, it is too plain for argument that the Allies assumed control over Germany's, and German nationals', "extraterritorial rights" not to disable Germans from inheriting in California, or anywhere else, but in order to insure that Germany's external assets represented by these rights could be vested by the several Allied governments and used for purposes of reparations. Thus, the very foundation of the international agreements and declarations dealing with German extraterritorial rights is the assumption that Germans continue to have property rights (including the right to inherit) in the various countries of the world. It is hardly surprising, therefore, that none of the Allied declarations and agreements relied upon by appellant as much as intimates that, *as a matter of occupation policy or of occupation law*,[5] German extraterritorial rights were suspended or impaired. Had they done so, they would have evidently defeated their own purpose. Finally, if appellant's contention were true, the scheme of the Trading With the Enemy Act would be completely undercut. It presupposes the continued existence in California, and in all other states, of German property rights,

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[5] Of course, the various Allied countries may have adopted domestic statutes (i.e., French, English, or American law) depriving Germans of the right to inherit property within those countries.

as the Court has explicitly recognized, *Clark* v. *Allen, supra,* 331 U. S. 510, 511.

For this reason—as stated above—we need not consider appellant's further contention that a policy of suspension or impairment of inheritance rights, pursued by the occupation authorities against the inhabitants of the occupied area, ousts, as a matter of federal constitutional law, California of its legislative authority to grant non-resident German enemy aliens property rights in California. Even where local law is displaced by what is clearly *federal* law (see footnote 4, *supra*), the Congressional or Executive intent to preempt the field must clearly appear. Cf. *Davies Warehouse Co.* v. *Bowles,* 321 U. S. 144, 154; *Hines* v. *Davidowitz,* 312 U. S. 52; *Hauenstein* v. *Lynham,* 100 U. S. 483. This is, *a fortiori,* true of international agreements which purport to deal only with the problems created by the military occupation of a foreign country and to provide for the internal governing law of the occupied territory.

Similarly, appellant can derive no comfort from his argument that the Allied agreements and declarations for the control of defeated Germany are political acts, not subject to judicial review, which deprived the courts below of their power to adjudicate the rights of German enemy aliens with respect to estates in California. The argument misconceives the meaning of the doctrine that political

acts are not subject to judicial review. It is true, of course, that the executive assumption and exercise of control over Germany is a political act not susceptible of judicial review. Cf. *United States* v. *Curtiss-Wright Export Corporation,* 299 U. S. 304, 320; *Chicago & Southern Air Lines, Inc.* v. *Waterman Steamship Corp.,* 333 U. S. 103, 111; *Hirota* v. *MacArthur,* 338 U. S. 197; *Johnson* v. *Eisentrager,* 339 U. S. 763; *Flick* v. *Johnson,* 174 F. 2d 983 (C.A.D.C.), certiorari denied, 338 U. S. 879. This does not mean, however, that in adjudicating private rights the courts are precluded from determining the effect of, or interpreting, a political act which is accepted as valid by everybody. Cf. *Guaranty Trust Co.* v. *United States,* 304 U. S. 126, 138; *Banco de España* v. *Federal Reserve Bank,* 114 F. 2d 438, 442 (C.A. 2). Here, neither appellant nor appellee question the validity of the Allied agreements and declarations. The parties are merely at issue concerning the impact of these documents on the rights of German enemy aliens to inherit in California. That issue was properly resolved against the appellant on the basis of "amply sufficient evidence."

CONCLUSION

For the foregoing reasons, it is evident that this appeal presents no substantial question. It is therefore respectfully submitted that the appeal

be dismissed or that the judgment of the District Court of Appeal of the State of California be affirmed.

PHILIP B. PERLMAN,
Solicitor General.

JULY, 1951

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 205

HERMANN WEINMANN,

Appellant,

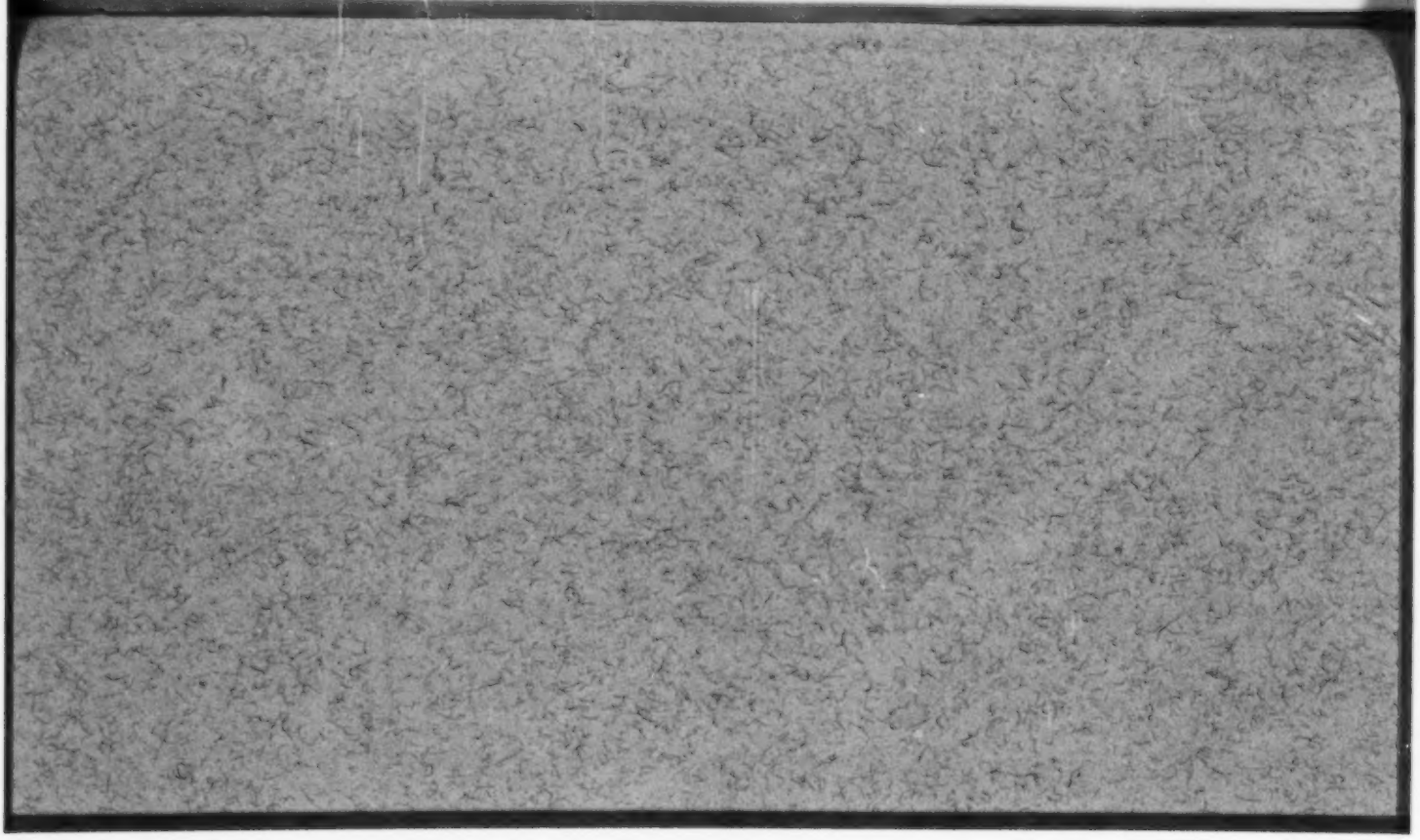
vs.

J. HOWARD McGRATH, ATTORNEY GENERAL OF THE UNITED STATES, AS SUCCESSOR TO ALIEN PROPERTY CUSTODIAN

APPEAL FROM THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

BRIEF OPPOSING MOTION TO DISMISS OR AFFIRM

GEORGE T. GOGGIN,
PIERCE LONERGAN,
Counsel for Appellant.



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IN THE DISTRICT COURT OF APPEAL, SECOND APPELLATE DISTRICT, STATE OF CALIFORNIA, DIVISION ONE

2nd Civil 17913

IN THE MATTER OF THE ESTATE OF CHRISTIAN F. REIHS, DECEASED

HERMANN WEINMANN,
Petitioner and Appellant,

vs.

J. HOWARD McGRATH, ATTORNEY GENERAL OF THE UNITED STATES, AS SUCCESSOR TO ALIEN PROPERTY CUSTODIAN,
Objector and Respondent,

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, A CORPORATION,
Executor

BRIEF OPPOSING MOTION TO DISMISS OR AFFIRM

A statement of the facts and law involved has been made in Appellant's Jurisdiction Statement and are adopted here for purposes of this brief (Jur. St., pp. 4-7).

The statements made by Appellee in support of his Motion to Dismiss or Affirm are untenable. Appellee ig-

nores the errors assigned and the federal questions raised on appeal (Assignment of Errors, Jur. St., pp. 2-3).

Appellee asserts his "understanding" of Appellant's claims (Motion to Dismiss, p. 6). These assertions result in Appellee's conclusion that while international agreements made by the President in exercise of American war power are applicable to the issues on appeal, those issues have been resolved by the factual findings of the state court (Motion to Dismiss, p. 11). Appellee's conclusion is unsupported by any principle of appellate practice and contrary to established law:

> "Where the decision of fact or of local law is so interwoven with the decision of a question of national authority that the one necessarily involves the other, we are not foreclosed by the state court's determination of the facts or of the local law. Otherwise national authority could be frustrated by local rules."
> (*United States* v. *Pink*, 315 U. S. 203, 238.)

No decision of a state court is tenable which arrives at a judgment in violation of principles of national sovereignty and provisions of the federal constitution. Determinations made by avoiding federal questions; or the considerations of such questions in a manner indicating an avoidance, are no less untenable. *Southwestern Bell Tel. Co.* v. *Oklahoma*, 303 U. S. 206, and cases cited at p. 213; *Ward* v. *Love*, 253 U. S. 17, 22; *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282, 289; *United States* v. *Pink*, 315 U. S. 203, 238. The Motion of Appellee is untenable upon the same authority and for like reasons.

Federal Questions Raised

In assignment of error I, Appellant presented (Jur. St. p. 10-12), and specified error in construing and applying Chapter 1160, Cal. Statutes of 1945 (Probate Code Section

259) to the issues and facts so as to be repugnant to and in violation of at least three provisions of the federal Constitution:

(A) Article II, Section 1, Clause 1, United States Constitution which vests executive power in the President; and grants authority to negotiate with our Allies of World War II, agreements to control extraterritorial legal rights of the inhabitants of occupied Germany, after the surrender; under the facts of this case.

(Principles stated and authorities cited, Jr. St., p. 8.)

(B) Article II, Section 2, Clause 1, United States Constitution, making the President Commander in Chief of the Armed Forces; with authority to establish Military Government in conquered territory. (Principles and authorities—Jur. St., p. 9.)

(C) Article VI, Clause 2, United States Constitution, making the Constitution, and international agreements executed by the President of the United States, under constitutional authority, the Supreme Law, and, obligatory upon every judge. (Jr. St., p. 10; *Hiroto* v. *MacArthur*, 338 U. S. 197, 208; *U. S.* v. *Curtiss-Wright Export Corporation*, 299, U. S. 304, 318-322.)

Assignment of Error I further specifies the California law as applied, is in conflict with designated international agreements entered into by the President in the exercise of American war power against Germany; particularly (Jr. St., p. 9) the California Law is contrary to:

> (1) The provisions of the Declaration of Berlin, paragraphs two and five; and, Article 13 (b) (Jur. St. Append. B. pp. 35, 36).
>
> Pertinent provisions of this declaration state that there is no central government or authority in Germany (2nd paragraph); that the designated allied governments assumed supreme authority with respect to

Germany, including all the powers possessed by the former German government and its subsidiaries (5th paragraph); and that the designated allied governments shall determine the territorial limits and status of Germany (6th paragraph); in Article 13 (b) of this declaration (Append. B, p. 36) it is declared that the allied representatives will impose on Germany "political, administrative, economical, financial, military and other requirements arising from the complete defeat of Germany."

(2) Potsdam—Tripartite Agreement of Berlin (Jur. St., Append. B, p. 37), provides that for the time being no central German government shall be established (9 (IV)) and that the Control Counsel shall take steps to "exercise control and the power of disposition of German owned external assets not already under the control of United Nations which have taken part in the war against Germany." (p. 38).

(3) Allied Representatives Proclamation 2—Agreement Between Allied Governments On Certain Additional Requirements To Be Imposed on Germany (Jur. St., Append. B, p. 38). This agreement (first paragraph) is a supplement and part of the requirements of the Allies imposed under the Declaration of Berlin. Allied Representatives Proclamation 2, declares that the Allied Representatives will regulate all matters affecting Germany's relations with other countries; and, prohibits any foreign obligation or undertaking to be assumed or entered into by German nationals without the sanction of the Allied Representatives (Jur. St. Append. B, p. 38 (III)).

This proclamation states that the Allied Representatives will give directions concerning the abrogation, or bring into force of any treaty, or any part or provision of any treaty, to which Germany had been a party; and, that as of the date of the German surrender, all diplomatic, commercial and other relations of Germany with other nations ceased to exist (Jr. St., Append. B, p. 39).

This proclamation states the Allied Representatives

> will exercise control over *all, or any part or aspect, of German* industry, trade, distribution and *economy generally, internal and external, and over all related or ancillary matters,* including the direction or prohibition of the use and disposal of any public or private buildings, products, materials, stocks or resources. (Append. B, p. 39); and further provides, that the Declaration of Berlin and all the proclamations and instructions issued thereunder should override any provisions in German law inconsistent therewith; and that *in the event of any doubt as to the meaning or interpretation of any term or expression* in the Declaration of Berlin and in any proclamation or instruction issued thereunder, *the decision of the Allied Representatives shall be final* (Jur. St., Append. B., p. 39 (XIII)). (Emphasis supplied.)

Appellee admits the validity of the Declaration and Proclamations in their application to the issues of this case below, and on appeal (Motion to Dismiss, p. 11). The Terms and provisions of these documents are plain and unequivocal. Under Article VI, Cl. 2 of the federal Constitution, they are the supreme law of the State of California, and of the United States. They are obligatory upon every judge.

As international agreements made with our Allies of World War II, they fall within, not only the provisions of Article II, Sect. 1, Cl. 1, which vests executive power in the President, as the sole organ of the United States in the field of foreign relations (*United States* v. *Curtiss-Wright Ex. Corp., supra*); but also, in their application to occupied Germany, after the surrender, are "in furtherance of the common objectives" of American war power against Germany (*Hiroto* v. *MacArthur, et al., supra*); exercised by the President. (Art. II, Sect. 2, Cl. 1), as Commander in Chief of the Armed Forces.

In reply to Appellee's Motion to Dismiss, Appellant will establish in what follows that:

1. Appellee's Motion is stated in terms and legal concepts that are inadequate to determinations of the substantial and grave character of the issues raised on appeal. Appellee's assertions are placed within too narrow a frame of reference to legal matters and principles involving dealings of the United States with foreign nations, and, the exercise of national sovereign powers.

2. The principal authority relied upon by Appellee is distinguishable. In *Clark* v. *Allen*, 331 U. S. 503, the sole constitutional issue raised was under Article I, Section 10. This section is not at issue on appeal. In the *Clark* case (*supra*) the Court expressly found no evidence of executive action terminating international relations with Germany (p. 514). In contrast, the record on appeal here, and international agreements before the Court, evidence the executive decisions, which determine the issues, under the Federal Constitution and principles of our national sovereignty.

3. The essentially political nature of the findings and conclusions of the state court involve determinations of, and attempts to define and limit, the exercise of sovereign powers of the United States, judicially. So constructed and applied the California law is contrary to and in violation of the constitutional provisions and international agreements upon which the appeal is based.

Issues Involve Matters of Grave International Concern

No approach to the issues of this case can properly be made without an understanding that the United States entered newly charted fields of international relations, with our Allies, and cobelligerent Russia, during hostilities in World War II, and, more particularly, as applied to the issues here, in the establishment of an international government for Germany, after the surrender. It should be understood that the enemies of our country and those opposed to

the accomplishment of the objects and purposes for which the war was fought, even before a peace treaty can be agreed upon, accuse this country of violating previously established principles of international law and compacts to which the United States is a party. (*i. e.*, Hague Convention, 1907).

Paraphrasing the language of Justice Jackson: "The issues are truly great ones. They only involve war crimes issues (in this instance rights of inheritance) secondarily, for primarily the decision will establish or deny that this (California) Court has power to review exercise of military powers abroad and the President's conduct of external affairs in our government. The answer will influence our nation's reputation for continuity of policy for a long time to come." (Memorandum Opinion, Oct. Term, 1948, 335 U. S. 875, 880).

The involvement of the judgment appealed in these essentially political matters is apparent in the holding that the statutes of the former German government remained in full force and effect and unimpaired, by the establishment of Military Government for Germany, May, 1945 (Jur. St. Append. A, p. 26 (XI); p. 27 (II)).

The California law becomes further involved in American foreign policy when consideration is given to the laws of nations.[1]

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[1] The purpose of this brief makes impractical to more than suggest the nature and form of Military Government For Germany, after the surrender, and its system of international law, and, the American position that the substantive law enforced by the Allied representatives constituted an inherent part of a legal system, international in character. The necessity of establishing the nature and character of government and system of law controlling the alien enemies in this case, seems necessary:

(1) To demonstrate that the issues on this appeal may not be determined at levels of domestic statutory law.

(2) To establish the essentially political nature of the determinations attempted in the judgment appealed.

(3) To establish the gravity of the error attempting to define and limit, judicially, the nature of individual private statutory rights in an essentially international political situation.

In modern times and among civilized nations it is recognized that a nation, as such, is composed of people, territory, and government. It is the argument of authorities recognized by some world powers, and by those inimical to the accomplishment of American policy, after the surrender, that after the destruction of the political government of Germany by conquest, there remained a "residual government," inherently in the inhabitants of the occupied territory; that this government, though unorganized and inoperative, is entitled to and protected by legal principles established and recognized by civilized nations. (*i.e.*, Hague Convention, Rules for the Conduct of War on Land, 1907, Art. 23 (no suspension of the courts); Art. 43 (respect for the laws of the country); Art. 46 (respect for domestic legal rights of private property and personal liberty). (Alstoetter case, pp. 10619, 10758.))

In the accomplishment of the broader purposes for which the war was fought, and to prevent Germany from ever again becoming a threat to the peace of the world, and a danger to the nations of Europe, the Allies agreed after the surrender, upon programs for denazification of the social, political, educational and judicial systems of Germany. The former German Civil Courts were closed. Reparations in kind were extracted. Objects of demilitarization were accomplished. Where justice and equity required, private property was restored retroactively to the year 1933; even where the titles of innocent third parties, validly acquired under German law, were divested retroactively. These programs were administered at all levels of public and private organization, and to persons and property. (Documents relating to the establishment of the Allied Control Authority—Official Gazette of the Control Council for Germany, supplement No. 1; Allied Representatives Proclamation, No. 2, Official Gazette, Control Council, No. 1, p. 8; Law 2, Official Gazette, U. S. Zone, Issue "A",

p. 7; Law 59, Issue "G", p. 1.) Under agreement of the Allies, the people were treated uniformly, insofar as was practical (Jr. St., Append. B, p. 37, III, A, 2).

Without doubt, and it is universally recognized by all acceptable authority, the United States scrupulously observed and complied with all of its international obligations in the conduct of the war against Germany. It is likewise generally accepted, and is evidenced by the international agreements to which the United States is a party, that an international government was established after the surrender, for the government of the occupied territory. ("Legal Status of Germany According to the Declaration of Berlin," Hans Kelsen, American Journal of International Law, 1945; "Germany's Present Status," F. A. Mann, Sueddeutsche Juresten-Zeitung, Volume 2, No. 2, September 1947; Alstoetter case, pp. 10, 615-16; quoting with approval American Journal of International Law, Freeman, July, 1947, p. 605; Fried, April, 1946, p. 327.) The people and territory were subjected to laws and regulations under the laws of nations, and laws, proclamations, directives and instructions of the Four Powers approved or acquiesced in by the United Nations. These became and constituted part of the system of international law governing the inhabitants of the occupied country in their internal and external affairs.[2] (Alstoetter case, p. 10621.)

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[2] The case of *United States* v. *Josef Alstoetter*, decided 3 December, 1947, by American Military Tribunal III, is cited in this brief, though a "criminal case" on indictments alleging "war crimes." It is cited for the following reasons:

1. The tribunal was established by United States Zonal Ordnance, but its authority and character was international (p. 10612).

2. The tribunal members were American Jurists trained in concepts of American constitutional law and to whom considerations and application of ex post facto and retroactive legislation is particularly repugnant in national legislation (p. 10648-49).

3. The decision in the Alstoetter case stated and defined the international nature and character of Military Government For Germany,

The Allied Representatives assumed supreme authority with all the powers of the former German government, over the social, economic, and political affairs of the people, in matters both external and internal, to the occupied territory (Jur. St. Append. B, p. 36).

Under these agreements and established principles of international law, the American concept of vested rights in private property is not necessarily expressed; and is not a principle of the law of nations. Some civilized nations do not accept this principle for all purposes. (Alstoetter case, pp. 10636-37.)

The Attorney General of the United States is of the opinion that vested rights of individuals in private property did not exist in the occupied territory. In an opinion filed in another case involving the same section of the California Probate Code, as in this case, the Attorney General stated:

> "Although retroactive laws are repugnant to the Constitution of the United States, it must be remembered that the issue in this case relates, not to Ameri-

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after the surrender, and its international system of law governing private persons and property (pp. 10614-10630).

4. The case is authority for the American position that Military Government For Germany, after the surrender, differs from the type of occupation when in the course of actual warfare an invading army enters and occupies the territory of another state. The case establishes the American doctrine that the Allied Powers were not subject to the limitations of the Hague Convention, in the occupation of Germany after the surrender (pp. 10614-15).

5. Its official interpretation and approval by quotation and citation of texts and statements of international authorities, which are the basis for appellant's assertions as to the nature and character of the government of Germany after the surrender, and the international issues which the judgment appealed would involve, if not reversed (pp. 10615-18).

Citations are to the pages of the official mimeographed copy of the decision, lodged in major public libraries in the United States, in the absence of any printed report of the case.

> can law, but to German law. In its supreme sovereign capacity the occupying authorities in Germany, through its Allied Control Council, is unrestricted in the laws it may enact. Retroactive laws in Germany today are valid. . . .
>
> "It is equally idle to speak of vested rights in connection with rights of inheritance as they existed in Germany on any date during the war." (Opinion filed in Estate of Marie V. Peters, Los Angeles County, Case No. 233,316, Vesting Order, September, 1946.)

From the foregoing considerations, it may appear that the judgment appealed is inextricably involved in determinations of international principles and agreements governing Germany, as of November 1946.

The judgment holds that under the law, as it existed in November, 1946, there existed rights of inheritance reciprocal to the statutory rights guaranteed under California law; and that, under the California law, there "passed to and vested in" designated alien enemies, the right to specific personal property in California. The judgment further holds that the former German laws of succession and inheritance remained in full force and effect, unimpaired, in their German constitutional guarantees (Jur. St. Append. A, p. 26 (XI); p. 27 (II), III)).

Such determinations do violence to the legal principles subscribed by the President in the establishment of an international government for the occupied territory, and the determination of the Allies that no German government existed after the surrender, with the necessary legal consequence that no German constitutional law remained.

Appellee's Motion to Dismiss discusses in its entirety matters appertaining to the exercise of control of individual private rights under military government for Germany. Considerations of administrative control do not encompass

the legal concepts necessary to determination of the issues on appeal. The substantial nature of the Federal questions raised by Appellant under Article II, Sect. 1, Cl. 1; Art. II, Sect. 2, Cl. 1; and Art. VI, Cl. 2, are not considered in Appellee's motion. In this respect, Appellant's jurisdictional statement remains unchallenged.

Clark v. *Allen*, 331 U. S. 503. Distinguished.

The case of *Clark* v. *Allen (supra)* was decided by this Court, in proceedings on writ of certiorari to the Ninth Circuit Court of Appeals, October Term, 1947.

In these proceedings the petitioner attacked the constitutionality of Section 259 of the California Court as a violation of Article I, Section 10, Federal Constitution, upon the grounds that the California law was an intrusion upon the forbidden entry into foreign relations and the making of treaties or compacts with foreign countries.

The California law originally enacted in 1941 was subsequently amended in 1945, in particulars not material to the constitutional issue involved in the *Clark* (*supra*) case, or on this appeal. The amendments consisted principally in the shifting of the burden of proof, and elimination from earlier law of the requirement that American citizens should have the right of payment of the proceeds of the foreign estate to them in the United States.

In California the legal fiction exists that title to property vests in heirs or beneficiaries, under the probate law, as of the date of death of decedent. The date of death of decedent in the *Clark* case (*supra*) was November, 1942. The effective date of the Supreme Court decision therefor was the year 1942. At this date the war against Germany was in progress. Germany had not surrendered; the Declaration of Berlin, the Potsdam Agreement and the Allied Agreement for Additional Requirements to be Imposed on Germany had not been made; and no international government

for Germany ruled the inhabitants of Germany under these agreements.

The only constitutional issue raised in the *Clark* case (*supra*) was under Art. I, Sec. 10, and the provisions of this section which prohibits states of the United States from entering into agreements, treaties or compacts with foreign nations. No issue is raised in this appeal under Art. I, Sect. 10.

The decision of the court expressly states:

> "We find no evidence that the political departments have considered the collapse and surrender of Germany as putting an end to such provisions of the treaty as survived the outbreak of the war, or the obligations of either party in respect to them." (P. 514).

And the Court concluded there was no invasion by the State of California of the international field as prohibited by Article I, Section 10.

It is respectfully submitted that in the instant case there is in evidence in this case, and part of the record on appeal (Jur. St. Append. B, pp. 1-8), the agreements which determine the nonexistence of the German government and the establishment of an international form of government for Germany, after the surrender. These agreements speak for themselves in plain and unequivocal terms. The validity of these agreements and their application to the facts and issues of this case, below, and on appeal, is admitted by the Appellee.

It does not appear in the *Clark* case (*supra*) that any of the constitutional issues raised in this appeal, were considered.

It is respectfully submitted that the authority of *Clark* v. *Allen* (*supra*) in its application to Section 259 of the California Probate Code, is limited to the record of that case, on certiorari, and, to the section of the Constitution considered.

Federal Questions Are Substantial

Assignment of Error I

Appellant's Assignment of Error I (Jur. St. pp. 10-12) assigns as error the State Court's construction and application of the California law (Chap. 1160, Laws of 1945). Construed and applied, as in the judgment appealed, the act grants to the alien enemies in this case constitutionally guaranteed, vested rights to personal property in California, contrary to and in violation of the international agreements of the President made by him in the exercise of American war power against Germany; and in violation of Article II, Sect. 1, Cl. 1, Federal Constitution, vesting executive power in the President; Art. II, Sect. 2, Cl. 1, making the President Commander in Chief of the Armed Forces; and, Art. VI, Cl. 2.

It is admitted, and otherwise established in this case, that by the terms of these agreements the President in the exercise of American war power, established along with the Allies, an international government for Germany, after the surrender; and that the system of law by which the inhabitants of the occupied territory were governed (including the aliens in this case) was a legal system without constitutional guarantees (in the general legal acceptation of the term), and with no guarantees of individual legal rights by a national government; and no such sanctions other than the uniform application of principles of equity and justice, recognized under the law of nations, in administration of programs for accomplishment of objects and purposes for which the international government was established. Under such a system of law, the concept of vested rights to private property, and the denial to the established government of authority to validly and retroactively divest individual titles to private property is not recognized (*Alstoetter* case; Opinion of Attorney General in *Peters* case).

The plain and unequivocal terms of the international agreements state that the Allied Representatives assumed supreme authority under this system of law; and declared that it extend to all social, economic, and political matters, directly or indirectly affecting the affairs of the inhabitants, and in all related matters, both external and internal, to the occupied territory. (See pp. 3-5, *supra.*)

It is submitted, that the California constitutionally guaranteed rights granted, under Section 259 of the California Probate Code, construed and applied to the alien enemies in this case, is a grant of legal rights contrary to the policy of the President as expressed in the agreements for the government of these aliens.

By the expressed terms of these agreements, all German law inconsistent with the Declaration of Berlin, or contrary to proclamations, directives, or instructions, of the Allied Representatives, were repealed. (Agreement on Additional Requirements, Jur. St., Append. B, p. 39, Sect. XI).

This agreement, Allied Representatives Proclamation 2, further provided that in the event of doubt as to the meaning or interpretation of any term or provision of the Declaration of Berlin, or any proclamation under it, the decision of the Allied Representatives was final. (Id., Sect. XIII)

Aside from the principle of law that these agreements are not subject to judicial review (Opinion of Justice Douglas—*Hiroto* v. *MacArthur*, 338 U. S. 197, 208; Memorandum Opinion Justice Jackson, Oct. Term, 1948, 335 U. S. 875), the agreement (Additional Requirements Imposed) expressly states that the decision of the Allied Representatives shall be final in any interpretation of the Declaration and other agreements and proclamations. This provision, as well as the whole body of principles established by the agreements, is the supreme law of California. (Article VI, Cl. 2, Federal Constitution) (*U. S.* v. *Belmont*, 301 U. S. 324, 331.)

Whether in the accomplishment of the objects for which the war was fought, it will serve the purpose of the Allied Representatives to recognize rights of these alien enemies to property in California or elsewhere, is a political matter, not for judicial determination by an American Court.

No state can rewrite the federal foreign policy to conform to its own domestic policies. As to such purposes, the State of California does not exist legislatively or judicially. In all negotiations and dealings of the United States with foreign nations, the United States speaks with one voice and acts as one; State lines disappear.

United States v. *Pink*, 315 U. S. 203, 233;
United States v. *Belmont*, 301 U. S. 324, 331-332.

ASSIGNMENT OF ERROR II

In his first assignment of error Appellant has stressed the legal fact that the judgment appealed, in attempting to apply California statutory law, has invoked the legislative power of the state in a manner contrary to, and in conflict with federal constitutional provisions and international agreements relied upon in this appeal.

By his assignment of error II, the Appellant attacks the authority of the state judiciary to enter the judgment appealed contrary to Article VI, Cl. 2, providing that the federal constitution and agreements made by the President, under his constitutional authority, are the supreme law and obligatory upon every judge.

The principles of national sovereignty and the provisions of the federal constitution which deny to the legislative branch of states of the United States, power and authority to exercise the exclusive prerogatives of national sovereignty, apply with equal force to denial to the judiciary the right to review the discretion of the executive in exercise of his exclusive powers of national sovereignty. Article VI, Cl. 2 is mandatory and self-executing.

The terms and provisions of the international agreements by which the President joined with our Allies, in the establishment of an international government for Germany, are clear and unequivocal. They provide that the Allied Representatives have the supreme authority in the carrying out of the programs which shall prevent Germany from ever again becoming a threat to the peace of the world, and a threat to her neighbors (*supra*, p. 8). These programs were carried out at all levels of society; public institutions, and private persons, and to public and individual property. In so doing, the Allied Representatives' decisions were final, in matters both internal and external to the occupied territory. (Supra p. 4(1)). The agreements override all provisions of German law inconsistent therewith (Jur. St. Ap. B, p. 8, Sect. XI). By Article VI, Cl. 2, the federal constitution makes these agreements obligatory upon every judge.

The agreements made by the President with our Allies in World War II "fall as clearly in the realm of political decisions as all other aspects of military alliances in furtherance of the common objectives of victory," and "when the President moves to make arrangement with other nations—he acts in a political role on a military matter. His discretion cannot be reviewed by the judiciary." (*Hiroto* v. *MacArthur*, 338, U. S. 197, 208).

The judgment appealed was the result of submitting these agreements to trial processes, and upon the testimony of private persons, determining the application of the international agreements to former German statutory law; and by judicial procedure, interpreting the agreements so as to deny to them the effect of supreme law in California. Under assignment of error II, Appellant submits that no such discretion exists in the judiciary. The jurisdiction to define the international agreements is the power to limit them. The rule applies to all international compacts and

agreements, "from the very fact that complete power over international affairs is in the national government and is not and cannot be subject to any curtailment or interference on the part of the several states." (*United States* v. *Belmont*, 301 U. S. 324, 331; citing *United States* v. *Curtiss-Wright Ex. Corp.*)

Appellee's motion to dismiss or affirm makes no reference to Appellant's Assignment of Error II and the issue raised (Jur. St., pp. 2, 3, B), that the judgment appealed does violence to Article VI, Cl. 2, federal constitution. The assignment deals particularly with the Clause 2, which makes international agreements of the President, under his constitutional authority, obligatory upon every judge. The involvement of international political determinations in the judgment is apparent from consideration of matters presented under assignment of error I and the federal question raised (Jur. St. p. 2-4); particularly in holding that the former German statutes remained in full force and effect and unimpaired in November, 1946; nearly eighteen months after the President declared no German government existed (Declaration of Berlin, June, 1945).

It was agreed by the President that after the surrender not only that "no German government" existed, but also that "no central government" would be established until the objectives of the war were attainable (Potsdam Agree. 9(IV)). An international government was established to apply to the peoples and territory occupied (including their extraterritorial legal rights), principles of international law.

It is determined in the judgment appealed that these agreements and the government established by them did not "impair" the former German statutory laws of inheritance, guaranteed by the former German constitution. (See

"resume" of evidence, Opinion District Appellate Court, Jur. St. Append. A, p. 19.) It would be difficult to assume a more flagrant invasion by the judiciary of the exclusively political functions of national sovereignty.

The judgment further holds that under the California law there "passed to and vested in" these aliens a right guaranteed by the California constitution to property in California. The Allied Representatives governed these aliens, both in their domestic and extraterritorial affairs, under a system of law which does not recognize vested rights. Whether it will serve the purposes of the President in the exercise of American war power, to agree with our Allies, that extraterritorial rights may vest in the inhabitants of the occupied territory is a political matter.

And when, as in the appealed judgment, the State Court determines that such rights do vest as of a definite date, November, 1946, the judgment not only attempts to limit the discretion and authority of the President, but is contrary to the expressed provisions of the international agreements which state that the Allied Representatives shall control the extraterritorial rights of the inhabitants; and, that in the interpretation of the agreements the decision of the Allied Representatives shall be final (Id. p. 8, Sect. XIII).

The judgment seems to demonstrate the need for the rule that the powers of the President exercised, under his constitutional authority, shall not be subject to judicial review.

> "When the President moves to make arrangements with other nations—he acts in a political role on a military matter. His discretion cannot be reviewed by the judiciary." (*Hiroto* v. *MacArthur, supra.*)

The judgment involves substantial federal issues not only repugnant to federal constitutional provisions cited on appeal but also to the exercise of federal sovereign power

inherent in national sovereignty (*U. S.* v. *Curtiss-Wright Ex. Corp.* (*supra*)). As it now stands the judgment based on "amply sufficient evidence" holds that the statutory civil rights of the inhabitants of the occupied territory remained in full force and effect, "unimpaired" in the guarantees of the German constitution. A concept of legal rights declared in the judgment as "reciprocal" to rights under the California law (Jur. St. Ap. A, p. 27, III).

So stated the judgment is "amply sufficient evidence," that important state judisdictions and courts do not subscribe to the American doctrine as to government and law existing in Germany under Military Government, after the surrender. To state the fact is to state substantial error, and basis for granting this appeal.

In the newly charted fields of international relations upon which the United States has entered, the international issues regarding Germany, after the surrender, "are truly great ones." The final determination of this case on appeal will establish or deny that the Courts of California have the power to review exercise of military powers abroad and the President's conduct of external affairs in our government. The answer will influence our nation's reputation for continuity of policy for a long time to come. (Memo. Opin. Justice Jackson, supra; *Hiroto* v. *MacArthur* (*supra*); *Alstoetter* case, *supra; United States* v. *Pink; United States* v. *Belmont* (*supra*).

Additional Federal Questions

Rather than rely upon the rule that this Court may notice grave errors other than those assigned on appeal, Appellant has assigned and raised substantial federal questions, in addition to those above presented, namely, Assignment of Errors III, IV and V (Jur. St., p. 3). These additional errors relate to violations of the same articles

and sections of the federal constitution, and were made in the judgment appealed, contrary to the international agreements made part of the record. Appellant desires to reserve presentation of these additionally assigned errors pending determination by this Court of Appellee's motion to dismiss or affirm.

Conclusion

The opinion of the State Court (Jur. St., p. 13), and Appellee's motion to dismiss, cite decisions of the Courts of California which disclose, in regard to the application of Section 259 of the California Probate Code to the inhabitants of former German territory, that there has developed in California, since the year 1941 and the declaration of war, a legal situation analogous to that which existed for nearly a decade in the State of New York, in regard to funds in that state, nationalized by the Soviet Government; which funds were later made the subject of the so-called Litvinov letters.

As pointed out by this Court in *United States* v. *Belmont* (*supra*) and *United States* v. *Pink* (*supra*), the "fantastic results" and "dialetic quagmires" which the New York Courts developed, arose from attempts to settle rights of individuals, inextricably involved in United States foreign affairs, by the application of domestic statutory rights, and concepts of law, inadequate for determinations of such matters. A similar legal situation exists in the instant case, and in the California cases relied upon in the decision appealed (*i. e.* Estate of Schluttig, 36 Cal., 2nd, p. 416 (224 P., 2nd, 295).

It is respectfully submitted that the issues raised on appeal present sustantial federal questions of grave importance and public concern. Proper recognition of the legal concepts and distinctions in the American dual system of federal and state government has not been made in this

case. Recognition of the authority of national sovereignty in our foreign affairs, in contrast to the legislative and judicial authority of the state, in domestic matters, is essential to determination of the issues on appeal. An inspection of the record and judgment appealed discloses that no consideration was given to these principles. The State Court attempted, in the exercise of a discretion it did not have, to determine the rights of individuals in terms and concepts of domestic state statutory law, inadequate for such determinations, under the facts.

Oblivious to the differences in state and national sovereignty, the State Court did not consider the authority of the executive branch of the national government, in international affairs and foreign wars. These federal issues were timely raised and assigned as error, on appeal. No mention of such issues is made in Appellee's motion to dismiss or affirm.

It is respectfully submitted that the motion of the Appellee to dismiss or affirm should be denied; the prayer of Appellant granted, and, the judgment of the State Court reversed.

George T. Goggin,
Attorney for Appellant.

Pierce Lonergan,
Of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 205

HERMANN WEINMANN,

Appellant,

vs.

J. HOWARD MCGRATH, Attorney General of the United States, as Successor to Alien Property Custodian,

Appellee,

Appeal From the District Court of Appeal of the State of California, Second Appellate District.

Petition for Rehearing and Consideration of the Record on Certiorari.

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J. HOWARD MCGRATH, Attorney General of the United States, as Successor to Alien Property Custodian,

Appellee,

Petition for Rehearing and Consideration of the Record on Certiorari.

This case was appealed to this Court by Hermann Weinmann, an American citizen and resident of the State of New Jersey, from a final judgment of the District Court of Appeal, Second Appellate District, State of California, and the highest State Court having jurisdiction of the issues.

On October 8, 1951 this Court entered its memorandum order, as follows:

> "PER CURIAM: The motion to dismiss is granted and the appeal is dismissed for the want of a substantial federal question. Mr. Justice Black dissents."

By order entered October 18th, time to file petition for rehearing was extended to and including November 1, 1951.

The above order of dismissal does not indicate the appeal record was considered as an application for a writ of certiorari in conformity with Title 28, U. S. C., Section 2103, Appellant therefore petitions this Court for consideration of the record on appeal as an application for writ of certiorari. It is respectfully insisted upon that this case is one of first instance.[1] The judgment of the state Court is definitely in conflict with principles heretofore decided by this Court; and in conflict with exercise of the authority and power granted the President, as Commander in Chief of the Armed Forces.

On appeal by assignments of error, timely raised and presented [Tr. p. .....], Appellant claimed the judgment of the state Court, and Section 259 of the California Probate Code, as construed and applied to the facts, were repugnant to and in violation of the constitution of the United States, and the clear and unequivocal provisions of international agreements made by the President with our Allies of World War II.

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[1]The record indicates that other cases in California involve these issues. It will not be denied that the Alien Property Custodian has vested the interests of devisees and beneficiaries in approximately 200 probate cases. Several of these now pending involve the identical issue here presented.

The subject matter of the issues before this Court may be summarized as follows:

Appellee's Motion to Dismiss (p. 11) states:

> "Here neither appellant or appellee question the validity of the Allied Agreements and declarations. The parties are merely at issue concerning the impact of these documents on the rights of German enemy aliens to inherit in California."

While true, in part, this does not state the complete issue. Improvidently as Appellant may have stated the issues in his jurisdictional statement, and in opposition to the motion to dismiss, there is inherently in the issue, as presented, the question:

> Under the Constitution of the United States what governmental authority shall determine "the impact"?

Appellee, despite the responsibility conferred upon him by Executive order (Motion to Dismiss, p. 2—footnote) insists that the state Courts assume the authority. Appellant submits that the federal Constitution gives to the office of the President of the United States the exclusive power to determine the rights of the enemy aliens in this case.

It is established in this case that the applicable international agreements (Jur. St. pp. 35-38); referred to by Appellee, were made by the President in the exercise of American war power, and "fall as clearly in the realm of political decisions as all other aspects of military alliances

in furtherance of the common objectives of victory." (*Hiroto v. MacArthur,* 338 U. S. 197, 208.) In the *Hiroto* case the opinion of the Court just quoted mentions the Potsdam Agreements. Among the agreements made at Potsdam, is the Allied Governments Agreement Imposing Additional Requirements on Germany. (Jur. St. p. 38.) This agreement expressly suspends all treaties to which Germany had been a party. By necessary inference the President in this "military alliance for the common objectives of victory," revoked the reciprocal rights of inheritance granted to nationals of the United States and Germany by the treaty of 1925. (*Clark v. Allen,* 331 U. S. 503.)

Accepting the statement in Appellee's motion to dismiss, that the issue in this case concerns "the impact of these documents on the rights of German enemy aliens to inherit in California," Appellant urges that the determination of this impact is not a judiciable question. (*Hiroto* case, *supra.*) The agreements to revoke reciprocal rights "fall clearly in the realm of political decisions."

In the *Hiroto* case involving provisions of the Potsdam agreements affecting Japanese nationals; and in other cases coming before this Court on petitions for writs of *habeas corpus* in the matter of Germans, this Court has scrupulously observed the constitutional authority of the President, and has refused to judicially determine the "impact" of his war time international agreements upon the civil liberties claimed by alien enemies affected by such agreements.

The issues here require a determination of the "impact" of these identical agreements upon the rights of alien enemies in Germany to inherit property in California. It has been Appellant's position before this Court, and in the state Courts, that the rights of alien enemies to personal property affected by these agreements "fall as clearly in the realm of political decisions," as the rights of these same aliens, or others like them, to personal liberty, affected by these "military alliances." The judicial branches of our state and federal government are without authority to determine these political matters, under the federal constitution.

It was presented on appeal, and in this petition that the assumption by the state Court of the authority to determine these political matters constituted a denial to Appellant of the right to have such determinations made by the political branch of our national government, under the federal constitution, and the decisions of this Court. (See Appellant's Brief Opposing Motion to Dismiss.)

We are not here dealing with dual state and federal sovereignty in peace time. No issue was raised in this case which denies to the state of California the legislative power to grant rights of succession or inheritance to property in California; nor has any issue been raised as to the jurisdiction of the state Courts to interpret and apply the probate laws of California, in the absence of a national foreign policy, to the contrary, or the exercise of power of national sovereignty granted exclusively to the executive.

Conclusion.

Appellant respectfully requests that a rehearing be granted and that Appellant be given the right to file briefs and present oral argument upon the record; and that the record be considered as an application for writ of certiorari; and for such other and further order of this Court as may be deemed proper in the premises.

Respectfully submitted,

GEORGE T. GOGGIN,
Attorney for Appellant,

PIERCE LONERGAN,
Of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 205

HERMANN WEINMANN,

Appellant,

vs.

J. HOWARD MCGRATH, Attorney General of the United States, as Successor to Alien Property Custodian,

Appellee.

Appeal From the District Court of Appeal of the State of California, Second Appellate District.

Certificate of Good Faith of Petition for Rehearing and Consideration of the Record on Certiorari.

In support of petition for rehearing and consideration of the record on certiorari, in the above entitled matter, the undersigned counsel for Appellant, and this Petitioner, hereby states and certifies that the said petition is made in good faith and not for the purpose of delay.

GEORGE T. GOGGIN,

Counsel for Appellant.

No. 205. WEINMANN *v.* MCGRATH, ATTORNEY GENERAL, SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN, ET AL. Appeal from the District Court of Appeal of California, Second Appellate District. *Per Curiam:* The motion to dismiss is granted and the appeal is dismissed for the want of a substantial federal question. MR. JUSTICE BLACK dissents. *George T. Goggin* for appellant. *Solicitor General Perlman* for McGrath, Attorney General, appellee. Reported below: 102 Cal. App. 2d 260, 227 P. 2d 564.